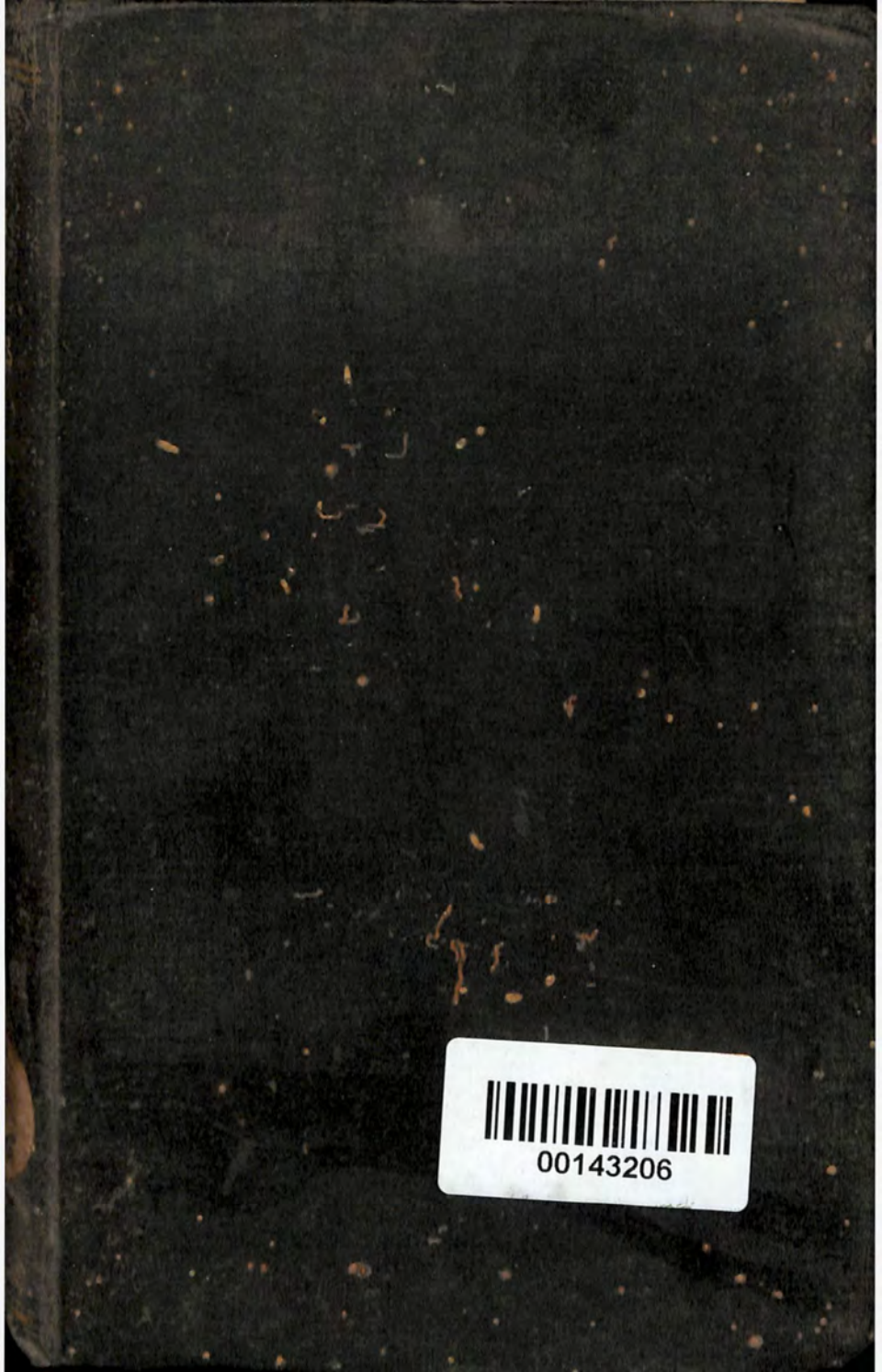
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THE

OREGON QUESTION

EXAMINED,

IN RESPECT TO

FACTS AND THE LAW OF NATIONS.

RRA.

BY

TRAVERS TWISS, D.C.L. F.R.S.

PROFESSOR OF POLITICAL ECONOMY IN THE UNIVERSITY OF OXFORD,

AND ADVOCATE IN DOCTORS' COMMONS.

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PREFACE.

THE object which the author had in view, in instituting the accompanying inquiry into the historical facts and the negotiations connected with the Oregon Territory, was to contribute, as far as his individual services might avail, to the peaceful solution of the question at issue between the United States of America and Great Britain. He could not resist the conviction, on reading several able treatises on the subject, that the case of the United States had been overstated by her writers and negotiators; and the perusal of Mr. Greenhow's Official Memoir, and subsequent History of Oregon and California, confirmed him in this impression, as they sought to establish more than was consistent with the acknowledged difficulty of a question, which has now been the subject of four fruitless negotiations. He determined, in consequence of this conviction, to investigate carefully the records of ancient discoveries and other matters of history connected with the north-west coast of America, concerning which much contradictory statement is to be met with in writers of acknowledged reputation. The result is the present work, which has unavoidably

assumed a much larger bulk than was anticipated by the author when he commenced the inquiry: it is hoped, however, that the arrangement of the chapters will enable the reader to select, without difficulty, those portions of the subject which he may deem to be most deserving of his attention.

The expeditions of Drake and of Gali have thus necessarily come under consideration; and the views of the author will be found to differ, in respect to both these navigators, from those advanced by Mr. Greenhow, more especially in respect to Drake. Had the author noticed at an earlier period Mr. Greenhow's remark in the Preface to the second edition of his History, that he has "never deviated from the rule of not citing authorities at second-hand," he would have thought it right to apologise for attributing the incorrectness of Mr. Greenhow's statements as to the respective accounts of Drake's expedition, to his having been misled by the authority of the article "Drake," in the Biographie Universelle. He would even now apologise, were not any other supposition under the circumstances less respectful to Mr. Greenhow himself.

In regard to Juan de Fuca, if the author could have supposed that in the course of the last negotiations at Washington, Mr. Buchanan would have pronounced that De Fuca's Voyage "no longer admits of reasonable doubt," he would have entered into a more careful analysis of Michael Lok's tale, to show that it is utterly irreconcileable with

ascertained facts. As it is, however, the author trusts that enough has been said in the chapter on the Pretended Discoveries of the North-west Coast, to convince the reader that both the stories of Juan de Fuca and Maldonado*, to the latter of whom Mr. Calhoun, at an earlier stage of the same negotiations, refers by name as the pioneer of Spanish enterprise, are to be ranked with Admiral Fonte's account, in the class of mythical discoveries.

In regard to Vancouver, the author, it is hoped, will be pardoned for expressing an opinion, that Mr. Greenhow has permitted his admitted jealousy for the fame of his fellow-citizens to lead him to do injustice to Vancouver's character, and to assail it with arguments founded in one or two instances upon incorrect views of Vancouver's own statements. Mr. Gallatin expressed a very different opinion of this officer, in his Counter-statement, during the negotiation of 1826, when he observes that Vancouver "had *too much probity* to alter his statement, when, on the ensuing day, he was informed by Captain Gray of the existence of the river, at the mouth of which he had been for several days without being able to enter it."

The chapter on the Convention of the Escurial is intended to give an outline of the facts and negotiations connected with the controversy between

* Maldonado's pretended Voyage bears the date of 1588. In the copy of Mr. Calhoun's letter, circulated on this side of the Atlantic, it is referred to the year 1528.

Spain and Great Britain in respect to Nootka Sound, and the subsequent settlement of the points in dispute. The arguments which the author conceived them to furnish against the positions of the Commissioners of the United States, have been inserted, as the opportunity offered itself, in the chapters on the several negotiations. The author, however, has introduced in this chapter, what appears to him to be a conclusive refutation of Mr. Buchanan's statement, "that no sufficient evidence has been adduced that either Nootka Sound, or any other spot on the coast, was ever actually surrendered by Spain to Great Britain."

The chapter on the Columbia River attempts to adjust the respective claims of Heceta, Gray, and Broughton to the discovery and exploration of that river.

A few chapters have been next inserted on points of international law connected with territorial title, which, it was thought, might facilitate the examination of the questions raised in the course of the negotiations by the Commissioners of Great Britain and the United States. They do not profess to be complete, but they embrace, it is believed, nearly all that is of importance for the reader to be familiar with.

The chapters on the Limits of Louisiana and the Treaty of Washington were required to elucidate the "derivative title" of the United States.

If the author could have anticipated the publication of the correspondence between Mr. Pakenham

and the Plenipotentiaries of the United States, he would most probably have adopted a different arrangement in his review of the several negotiations, so as to avoid an appearance of needless repetition. His manuscript, however, with the exception of the two last chapters, was completed before the President's message reached this country. As the earlier sheets, however, were passing through the press, one or two remarks have been inserted which have a bearing on the recent correspondence; but it should be observed, that a separate review of each negotiation was designedly adopted, for the purpose of enabling the reader to appreciate more readily the variety of phases, which the claims of the United States have assumed in the course of them.

Some observations have been made in Chapter XII. and other places, upon the general futility of the argument from maps in the case of disputed territory. The late negotiations at Washington have furnished an apposite illustration of the truth of the Author's remarks. Mr. Buchanan, towards the conclusion of his last letter to Mr. Pakenham, addressed an argument to the British Minister, of the kind known to logicians as the *argumentum ad verecundiam*:—"Even British geographers have not doubted our title to the territory in dispute. There is a large and splendid globe now in the Department of the State, recently received from London, and published by Maltby and Co., manufacturers and publishers to 'The Society for the Diffusion of Useful Knowledge,' which assigns this

territory to the United States." The history, however, of this globe is rather curious. It was ordered of Mr. Malby (not Maltby) for the Department of State at Washington, before Mr. Everett quitted his post of Minister of the United States in this country. It no doubt deserves the commendation bestowed upon it by Mr. Buchanan, for Mr. Malby manufactures excellent globes; but the globe sent to Washington was not made from the plates used on the globes published under the sanction of "The Society for the Diffusion of Useful Knowledge," though this is not said by way of disparagement to it. The Society, in its maps, has carried the boundary line west of the Rocky Mountains, along the 49th parallel to the Columbia River, and thence along that river to the sea; but in its globes the line is not marked beyond the Rocky Mountains. Mr. Malby, knowing that the globe ordered of him was intended for the Department of State at Washington, was led to suppose that it would be more satisfactorily completed, as it was an American order, if he coloured in, for it is not engraved, the boundary line proposed by the Commissioners of the United States. The author would apologise for discussing so trifling a circumstance, had not the authorities of the United States considered the fact of sufficient importance to ground a serious argument upon it.

Two maps have been annexed to this work. The map of North America is based chiefly upon that published by "The Society for the Diffusion of

Useful Knowledge," but considerable alterations have been made in the parts westward of the Rocky Mountains and south of the Columbia River, in accordance with the results of recent researches in that country. The map of the Oregon Territory itself has been copied from one lately published in the octavo edition of Commander Wilkes' "Exploring Expedition." A copy of the larger map attached to the quarto edition of that work, which is probably the best map extant, has recently been published in this country by Mr. Wyld, the geographer.

In conclusion, the Author must beg pardon of the distinguished diplomatists in the late negotiations at Washington, whose arguments he has subjected to criticism, if he has omitted to notice several portions of their statements, to which they may justly attribute great weight. It is not from any want of respect that he has neglected them, but the limits of his work precluded a fuller consideration of the subject.

London,
Jan. 22. 1846.

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THE OREGON QUESTION.

CHAPTER I.

THE OREGON TERRITORY.

North-west America. — Plateau of Anahuac. — Rocky Mountains. — New Albion. — New Caledonia. — Oregon, or Oregan, the River of the West. — The Columbia River. — Extent of the Oregon Territory. — The Country of the Columbia. — Opening of the Fur Trade in 1786 — Vancouver. — Straits of Anian. — Straits of Juan de Fuca. — Barclay. — Meares. — The American sloop Washington. — Galiano and Valdés. — Journey of Mackenzie in 1793. — The Tacoutche-Tesse, now Frazer's River. — North-west Company in 1805. — The Hudson's Bay Company in 1670. — The First Settlement of the North-west Company across the Rocky Mountains in 1806, at Frazer's Lake. — Journey of Mr. Thomson, the Astronomer of the North-west Company, down the North Branch of the Columbia River, in 1811. — Expedition of Lewis and Clarke, in 1805. — The Missouri Fur Company, in 1808. — Their First Settlement on the West of the Rocky Mountains. — The Pacific Fur Company, in 1810. — John Jacob Astor, the Representative of it. — Astoria established in 1811. — Dissolution of the Pacific Fur Company, in July, 1813. — Transfer of Astoria to the North-west Company, by Purchase, in October, 1813. — Subsequent Arrival of the British Sloop-of-War, the Racoon. — Name of Astoria changed to Fort George.

NORTH-WESTERN AMERICA is divided from the other portions of the continent by a chain of lofty mountains, which extend throughout its entire length in

a north-westerly direction, in continuation of the Mexican Andes, to the shores of the Arctic Ocean. The southern part of this chain, immediately below the parallel of 42° north latitude, is known to the Spaniards by the name of the Sierra Verde, and the central ridge, in continuation of this, as the Sierra de las Grullas; and by these names they are distinguished by Humboldt in his account of New Spain, (Essai Politique sur la Nouvelle Espagne, l. i. c. 3.), as well as in a copy of Mitchell's Map of North America, published in 1834. Mr. Greenhow, in his History of Oregon and California, states that the Anahuac Mountains is "the appellation most commonly applied to this part of the dividing chain extending south of the 40th degree of latitude to Mexico," but when and on what grounds that name has come to be so applied, he does not explain. Anahuac was the denomination before the Spanish conquest of that portion of America which lies between the 14th and 21st degrees of north latitude, whereas the Cordillera of the Mexican Andes takes the name of the Sierra Madre a little north of the parallel of 19°, and the Sierra Madre in its turn is connected with the Sierra de las Grullas by an intermediate range, commencing near the parallel of 30°, termed La Sierra de los Mimbres. The application, indeed, of the name Anahuac to the entire portion of the chain which lies south of 40°, may have originated with those writers who have confounded Anahuac with New Spain; but as the use of the word in this sense is incorrect, it hardly seems desirable to adopt an appellation which is calculated to produce confusion, whilst it perpe-

tuates an error, especially as there appear to be no reasonable grounds for discarding the established Spanish names. The plateau of Anahuac, in the proper sense of the word, comprises the entire territory from the Isthmus of Panama to the 21st parallel of north latitude, so that the name of Anahuac Mountains would, with more propriety, be confined to the portion of the Cordillera south of 21°. If this view be correct, the name of the Sierra Verde may be continued for that portion of the central range which separates the head waters of the Rio Bravo del Norte, which flows into the Gulf of Mexico, and forms the south-western boundary of Texas, from those of the Rio Colorado (del Occidente), which empties itself into the Gulf of California. Plateau of Anahuac.

The Rocky Mountains, then, or, as they are frequently called, the Stony Mountains, will be the distinctive appellation of the portion of the great central chain which lies north of the parallel of 42°; and if a general term should be required for the entire chain to the south of this parallel, it may be convenient to speak of it as the Mexican Cordillera, since it is co-extensive with the present territory of the United States of Mexico, or else as the Mexican Andes, since the range is, both in a geographical and a geological point of view, a continuation of the South American Andes. Rocky Mountains.

Between this great chain of mountains and the Pacific Ocean a most ample territory extends, which may be regarded as divided into three great districts. The most southerly of these, of which the northern boundary line was drawn along the

parallel of 42°, by the Treaty of Washington in 1819, belongs to the United States of Mexico. The most northerly, commencing at Behring's Straits, and of which the extreme southern limit was fixed at the southernmost point of Prince of Wales's Island in the parallel of 54° 40′ north, by treaties concluded between Russia and the United States of America in 1824, and between Russia and Great Britain in 1825, forms a part of the dominions of Russia; whilst the intermediate country is not as yet under the acknowledged sovereignty of any power.

To this intermediate territory different names have been assigned. To the portion of the coast between the parallels of 43° and 48°, the British have applied the name of New Albion, since the expedition of Sir Francis Drake in 1578-80, and the British Government, in the instructions furnished by the Lords of the Admiralty, in 1776, to Captain Cook, directed him "to proceed to the coast of New Albion, endeavouring to fall in with it in the latitude of 45°. (Introduction to Captain Cook's Voyage to the Pacific Ocean, 4to. 1784, vol. i. p. xxxii.). At a later period Vancouver gave the name of New Georgia to the coast between 45° and 50°, and that of New Hanover to the coast between 50° and 54°; whilst to the entire country north of New Albion, between 48° and 56° 30′, from the Rocky Mountains to the sea, British traders have given the name of New Caledonia, ever since the North-west Company formed an establishment on the western side of the Rocky Mountains, in 1806. (Journal of D. W. Harmon, quoted by Mr. Greenhow, p. 291.)

New Albion.

New Caledonia.

The Spanish government, on the other hand, in the course of the negotiations with the British government which ensued upon the seizure of the British vessels in Nootka Sound, and terminated in the Convention of the Escurial, in 1790, designated the entire territory as "the Coast of California, in the South Sea." (Declaration of His Catholic Majesty, June 4th, transmitted to all the European Courts, in the Annual Register, 1790.) Of late it has been customary to speak of it as the Oregon territory, or the Columbia River territory, although some writers confine that term to the region watered by the Oregon or Columbia River, and its tributaries.

The authority for the use of the word Oregon, or more properly speaking Oregan, has not been clearly ascertained, but the majority of writers agree in referring the introduction of the name to Carver's Travels. Jonathan Carver, a native of Connecticut and a British subject, set out from Boston in 1766, soon after the transfer of Canada to Great Britain, on an expedition to the regions of the Upper Mississippi, with the ultimate purpose of ascertaining "the breadth of that vast continent, which extends from the Atlantic to the Pacific Ocean, in its broadest part, between 43° and 46° of north latitude. Had I been able," he says, "to accomplish this task, I intended to have proposed to government to establish a post in some of those parts, about the Straits of Anian, which having been discovered by Sir Francis Drake, of course belong to the English." The account of his travels, from the introduction to which the above extract in his own words is quoted, was published in London

in 1778. Carver did not succeed in penetrating to the Pacific Ocean, but he first made known, or at least established a belief in, the existence of a great river, termed apparently by the nations in the interior Oregon, or Oregan, the source of which he placed not far from the head waters of the River Missouri, "on the other side of the summit of the lands, that divide the waters which run into the Gulf of Mexico from those which fall into the Pacific Ocean." He was led to infer, from the account of the natives, that this "Great River of the West" emptied itself near the Straits of Anian, (Carver's Travels, 3d edit., London, 1781, p. 542.) although it may be observed that the situation of the so-called Straits of Anian themselves was not at this time accurately fixed. Carver, however, was misled in this latter respect, but the description of the locality where he placed the source of the Oregon, seems to identify it either with the Flatbow, or M'Gillivray's River, or else, and perhaps more probably, with the Flathead or Clark's River, each of which streams, after pursuing a north-western course from the base of the Rocky Mountains, unites with a great river coming from the north, which ultimately empties itself into the Pacific Ocean in latitude 46° 18′. The name of Oregon has consequently been perpetuated in this main river, as being really "the Great River of the West," and by this name it is best known in Europe; but in the United States of America, it is now more frequently spoken of as the Columbia River, from the name of the American vessel "The Columbia," which first succeeded in passing the

Oregon, or Oregan.

Columbia River.

bar at its mouth in 1792. The native name, however, will not totally perish in the United States, for it has been embalmed in the beautiful verse of Bryant, whom the competent judgment of Mr. Washington Irving has pronounced to be amongst the most distinguished of American poets:

> "Take the wings
> Of morning, and the Barcan desert pierce,
> Or lose thyself in the continuous woods
> Where rolls the Oregan, and hears no sound
> Save his own dashings." . . .

Oregon Territory.

If we adopt the more extensive use of the term Oregon territory, as applied to the entire country intermediate between the dominions of Russia and Mexico respectively, its boundaries will be the Rocky Mountains on the east, the Pacific Ocean on the west, the parallel of 54° 40′ N. L. on the north, and that of 42° N. L. on the south. Its length will thus comprise 12 degrees 40 minutes of latitude, or about 760 geographical miles. Its breadth is not so easily determined, as the Rocky Mountains do not run parallel with the coast, but trend from south-east to north-west. The greatest breadth, however, appears to comprise about 14 degrees of longitude, and the least about 8 degrees; so that we may take 11 degrees, or 660 geographical miles, as the average breadth. The entire superficies would thus amount to 501,600 geographical square miles, equal to 663,366 English miles. If, on the other hand, we adopt the narrower use of the term, and accept the north-western limit which Mr. Greenhow, in his second edition of his History of Oregon and California, has marked out

Country of the Columbia.

for "the country of the Columbia," namely, the range of mountains which stretches north-eastward from the eastern extremity of the Straits of Fuca, about 400 miles, to the Rocky Mountains, separating the waters of the Columbia from those of Frazer's river, it will still include, upon his authority, not less than 400,000 square miles in superficial extent, which is more than double that of France, and nearly half of all the states of the Federal Union. "Its southernmost points" in this limited extent "are in the same latitudes with Boston and with Florence; whilst its northernmost correspond with the northern extremities of Newfoundland, and with the southern shores of the Baltic Sea."

Such are the geographical limits of the Oregon territory, in its widest and in its narrowest extent. The Indian hunter roamed throughout it, undisturbed by civilised man, till near the conclusion of the last century, when Captain James King, on his return from the expedition which proved so fatal to Captain Cook, made known the high prices which the furs of the sea otter commanded in the markets of China, and thereby attracted the attention of Europeans to it. The enterprise of British merchants was, in consequence of Captain King's suggestion, directed to the opening of a fur trade between the native hunters along the north-west coast of America, and the Chinese, as early as 1786. The attempt of the Spaniards to suppress this trade by the seizure of the vessels engaged in it, in 1789, led to the dispute between the crowns of Spain and Great Britain, in respect of the claim to exclusive sovereignty asserted by the former power over the

Fur trade.

port of Nootka and the adjacent latitudes, which was brought to a close by the Convention of the Escurial in 1790.

The European merchants, however, who engaged in this lucrative branch of commerce, confined their visits to stations on the coasts, where the natives brought from the interior the produce of their hunting expeditions; and even in respect of the coast itself, very little accurate information was possessed by Europeans, before Vancouver's survey. Vancouver, as is well known, was despatched in 1791 by the British government to superintend, on the part of Great Britain, the execution of the Convention of the Escurial, and he was at the same time instructed to survey the coast from 35° to 60°, with a view to ascertain in what parts civilised nations had made settlements, and likewise to determine whether or not any effective water communication, available for commercial purposes, existed in those parts between the Atlantic and Pacific Oceans. Vancouver.

The popular belief in the existence of a channel, termed the Straits of Anian, connecting the waters of the Pacific with those of the Atlantic Ocean, in about the 58th or 60th parallel of latitude, through which Gaspar de Cortereal, a Portuguese navigator, was reported to have sailed in 1500, had caused many voyages to be made along the coast on either side of North America during the 16th and 17th centuries, and the exaggerated accounts of the favourable results of these voyages had promoted the progress of geographical discovery by stimulating fresh expeditions. In the 17th century, a narrative Straits of Anian.

was published by Purchas, in his "Pilgrims," professing that a Greek pilot, commonly called Juan de Fuca, in the service of the Spaniards, had informed Michael Lock the elder, whilst he was sojourning at Venice in 1596, that he had discovered, in 1592, the outlet of the Straits of Anian, in the Pacific Ocean, between 47° and 48°, and had sailed through it into the North Sea. The attention of subsequent navigators was for a long time directed in vain to the re-discovery of this supposed passage. The Spanish expedition under Heceta, in 1775, and the British under Cook, in 1778, had both equally failed in discovering any corresponding inlet in the north-west coast, doubtless, amongst other reasons, because it had been placed by the author of the tale between the parallels of 47° and 48°, where no strait existed. In 1787, however, the mouth of a strait was descried a little further northward, between 48° and 49°, by Captain Barclay, of the Imperial Eagle, and the entrance was explored in the following year by Captain Meares, in the Felice, who perpetuated the memory of Michael Lock's Greek pilot, by giving it the name of the Straits of Juan de Fuca. Meares, in his observations on a north-west passage, p. lvi., prefixed to his Voyage, published in 1790, states that the American merchant sloop the Washington, upon the knowledge which he communicated, penetrated the straits of Fuca in the autumn of 1789, "as far as the longitude of 237° east of Greenwich," (123° west,) and came out into the Pacific through the passage north of Queen Charlotte's Island. Vancouver's attention was directed, in consequence of Captain Meares'

Straits of Juan de Fuca.

report, to the especial examination of this strait, and it was surveyed by him, with the rest of the coast, in a most complete and effectual manner. A Spanish expedition, under Galiano and Valdés, was engaged about the same time upon the same object, so that from this period, i. e., the concluding decade of the last century, the coast of Oregon may be considered to have been sufficiently well known.

The interior, however, of the country, had remained hitherto unexplored, and no white man seems ever to have crossed the Rocky Mountains prior to Alexander Mackenzie, in 1793. Having ascended the Unjigah, or Peace River, from the Athabasca Lake, on the eastern side of the Rocky Mountains, to one of its sources in 54° 24′, Mackenzie embarked upon a river flowing from the western base of the mountains, called, by the natives, Tacoutche-Tesse. This was generally supposed to be the northernmost branch of the Columbia river, till it was traced, in 1812, to the Gulf of Georgia, where it empties itself in 49° latitude, and was thenceforth named Frazer's river. Mackenzie, having descended this river for about 250 miles, struck across the country westward, and reached the sea in 52° 20′, at an inlet which had been surveyed a short time before by Vancouver, and had been named by him Cascade Canal. *This was the first expedition of civilised men through the country west of the Rocky Mountains.* It did not lead to any immediate result in the way of settlement, though it paved the way by contributing, in conjunction with Vancouver's survey, to confirm the conclusion at which Captain Cook had arrived, that

Mackenzie.

Tacoutche-Tesse.

the American continent extended in an uninterrupted line north-westward to Behring's Straits.

The result of Mackenzie's discoveries was to open a wide field to the westward for the enterprise of British merchants engaged in the fur trade; and thus we find a settlement in this extensive district made, not long after the publication of his voyage, by the agents of the North-west Company. This great association had been growing up since 1784, upon the wreck of the French Canadian fur trade, and gradually absorbed into itself all the minor companies. It did not, however, obtain its complete organisation till 1805, when it soon became a most formidable rival to the Hudson's Bay Company, which had been chartered as early as 1670, and had all but succeeded in monopolising the entire fur trade of North America, after the transfer of Canada to Great Britain. The Hudson's Bay Company, with the characteristic security of a chartered company, had confined their posts to the shores of the ample territory which had been granted to them by the charter of Charles II., and left the task of procuring furs to the enterprise of the native hunters. The practice of the hunters was to suspend their chase during the summer months, when the fur is of inferior quality, and the animals rear their young, and to descend by the lakes and rivers of the interior to the established marts of the Company, with the produce of the past winter's campaign. The North-west Company adopted a totally different system. They dispatched their servants into the very recesses of the wilderness, to bargain with the

North-west Company.

native hunters at their homes. They established *wintering partners* in the interior of the country, to superintend the intercourse with the various tribes of Indians, and employed at one time not fewer than 2000 *voyageurs* or boatmen. The natives being thus no longer called away from their pursuit of the beaver and other animals, by the necessity of resorting as heretofore to the factories of the Hudson's Bay Company, continued on their hunting-grounds during the whole year, and were tempted to kill the cub and full-grown animal alike, and thus to anticipate the supply of future years. As the nearer hunting-grounds became exhausted, the North-west Company advanced their stations westwardly into regions previously unexplored, and, in 1806, they pushed forward a post across the Rocky Mountains, through the passage where the Peace River descends through a deep chasm in the chain, and formed a trading establishment on a lake now called Frazer's Lake, situated in 54° N.L. Frazer's Lake. "*This*," according to Mr. Greenhow, "*was the first settlement or post of any kind made by British subjects west of the Rocky Mountains.*" It may be observed, likewise, that it was the first settlement made on the west of the Rocky Mountains, *by civilised men.* It is from this period, according to Mr. Harmon, who was a partner in the Company, and the superintendent of its trade on the western side of the Rocky Mountains, that the name of New Caledonia has been used to designate the northern portion of the Oregon territory.

Other posts were soon afterwards formed amongst the Flat-head and Kootanie tribes on the head

waters or main branch of the Columbia; and Mr. David Thomson, the astronomer of the North-west Company, descended with a party to the mouth of the Columbia in 1811. Mr. Thomson's mission, according to Mr. Greenhow, was expressly intended to anticipate the Pacific Fur Company in the occupation of a post at the mouth of the Columbia. Such, indeed, may have been the ultimate intention, but the survey of the banks of the river, and the establishment of posts along it, was no less the object of it. Mr. Thomson was highly competent to conduct such an expedition, as may be inferred from the fact that he had been employed in 1798 to determine the latitude of the northernmost source of the Mississippi, and had on that occasion shown the impossibility of drawing the boundary line between the United States of America and Canada, due west from the Lake of the Woods to the Mississippi, as had been stipulated in the second article of the treaty of 1783. *Mr. Thomson and his followers were*, according to Mr. Greenhow, *the first white persons who navigated the northern branch of the Columbia, or traversed any part of the country drained by it.*

Mr. David Thomson.

The United States of America had, in the mean time, not remained inattentive to their own future commercial interests in this quarter, as they had despatched from the southern side an exploring party across the Rocky Mountains, almost immediately after their purchase of Louisiana in 1803. On this occasion, Mr. Jefferson, then President of the United States, commissioned Captains Lewis and Clarke "to explore the River Missouri and its principal branches

Lewis and Clarke.

to their sources, and then to seek and trace to its termination in the Pacific some stream, whether the Columbia, the Oregon, the Colorado, or any other, which might offer the most direct and practicable water communication across the continent for the purposes of commerce." The party succeeded in passing the Rocky Mountains towards the end of September, 1805, and after following, by the advice of their native guides, the Kooskooskee River, which they reached in the latitude 43° 34′, to its junction with the principal southern tributary of the Great River of the West, they gave the name of Lewis to this tributary. Having in seven days afterwards reached the main stream, they traced it down to the Pacific Ocean, where it was found to empty itself, in latitude 46° 18′. They thus identified the Oregon, or Great River of the West of Carver, with the river to whose outlet Captain Gray had given the name of his vessel, the Columbia, in 1792; and having passed the winter amongst the Clatsop Indians, in an encampment on the south side of the river, not very far from its mouth, which they called Fort Clatsop, they commenced, with the approach of spring, the ascent of the Colombia on their return homeward. After reaching the Kooskooskee, they pursued a course eastward till they arrived at a stream, to which they gave the name of Clarke, as considering it to be the upper part of the main river, which they had previously called Clarke at its confluence with the Lewis. Here they separated, at about the 47th parallel of latitude. Captain Lewis then struck across the country, northwards, to the Rocky Mountains,

Kooskooskee River.

Fort Clatsop.

and crossed them, so as to reach the head waters of the Maria River, which empties itself into the Missouri just below the Falls. Captain Clarke, on the other hand, followed the Clarke River towards its sources, in a southward direction, and then crossed through a gap in the Rocky Mountains, so as to descend the Yellowstone River to the Missouri. Both parties united once more on the banks of the Missouri, and arrived in safety at St. Louis in September, 1806.

The reports of this expedition seem to have first directed the attention of traders in the United States to the hunting grounds of Oregon. The Missouri Fur Company was formed in 1808, and Mr. Henry, one of its agents, established a trading post on a branch of the Lewis River, the great southern arm of the Columbia. *This seems to have been the earliest establishment of any kind made by citizens of the United States west of the Rocky Mountains.* The hostility, however, of the natives, combined with the difficulty of procuring supplies, obliged Mr. Henry to abandon it in 1810. The Pacific Fur Company was formed about this time at New York, with the object of monopolising, if possible, the commerce in furs between China and the north-west coast of America. The head of this association was John Jacob Astor, a native of Heidelberg, who had emigrated to the United States, and had there amassed very considerable wealth by extensive speculations in the fur trade. He had already obtained a charter from the Legislature of New York in 1809, incorporating a company, under the name of the American Fur Company, to compete

Missouri Fur Company.

John Jacob Astor.

with the Mackinaw Company of Canada, within the Atlantic States, of which he was himself the real representative, according to his biographer, Mr. Washington Irving, his board of directors being merely a nominal body. In a similar manner, Mr. Astor himself writes to Mr. Adams in 1823, (Letter from J. J. Astor, of New York, to the Hon. J. Q. Adams, Secretary of State of the United States, amongst the proofs and illustrations in the appendix to Mr. Greenhow's work,) "You will observe that the name of the Pacific Fur Company is made use of at the commencement of the arrangements for this undertaking. I preferred to have it appear as the business of a company rather than of an individual, and several of the gentlemen engaged, Mr. Hunt, Mr. Crooks, Mr. M'Kay, M'Dougal, Stuart, &c., were in effect to be interested as partners in the undertaking, so far as respected the profit which might arise, but the means were furnished by me, and the property was solely mine, and I sustained the loss." Mr. Astor engaged, on this understanding, nine partners in his scheme, of whom six were Scotchmen, who had all been in the service of the North-west Company, and three were citizens of the United States. He himself had become naturalised in the United States, but of his Scotch partners the three at least who first joined him seem to have had no intention of laying aside their national character, as, previously to signing, in 1810, the articles of agreement with Mr. Astor, they obtained from Mr. Jackson, the British Minister at Washington, an assurance that "in case of a war between the two

nations, they would be respected as British subjects and merchants."

Mr. Astor, having at last arranged his plans, despatched in September, 1810, four of his partners, with twenty-seven subordinate officers and servants, all British subjects, in the ship Tonquin, commanded by Jonathan Thorne, a lieutenant in the United States navy, to establish a settlement at the mouth of the Columbia river. They arrived at their destination in March, 1811, and erected in a short time a factory or fort on the south side of the river, about ten miles from the mouth, to which the name of Astoria was given. The Tonquin proceeded in June on a trading voyage to the northward, and was destroyed with her crew by the Indians in the Bay of Clyoquot, near the entrance of the Strait of Fuca.

Astoria.

In the following month of July Mr. Thomson, the agent of the North-west Company, to whom allusion has already been made, descended the northern branch of the Columbia, and visited the settlement at the mouth of the Columbia. He was received with friendly hospitality by his old companion, Mr. M'Dougal, who was the superintendent, and shortly took his departure again, Mr. Stuart, one of the partners, accompanying him up the river as far as its junction with the Okinagan, where he remained during the winter, collecting furs from the natives. The factory at Astoria, in the mean time, was reinforced in January, 1812, by a further detachment of persons in the service of the Pacific Fur Company, who had set out overland early in 1811, and after suffering extreme hardships, and losing several of their number, at last made their way, in separate parties,

to the mouth of the Columbia. A third detachment was brought by the ship Beaver, in the following May. All the partners of the Company, exclusive of Mr. Astor, had now been despatched to the scene of their future trading operations. Mr. Mackay, who had accompanied Mackenzie in his expedition to the Pacific in 1793, was alone wanting to their number: he had unfortunately proceeded northwards with Captain Thorne, in order to make arrangements with the Russians, and was involved in the common fate of the crew of the Tonquin.

The circumstances, however, of this establishment underwent a great change upon the declaration of war by the United States against Great Britain in June, 1812. Tidings of this event reached the factory in January, 1813. In the mean time Mr. Hunt, the chief agent of the Company, had sailed from Astoria, in the ship Beaver, in August, 1812, to make arrangements for the trade along the northern coast; whilst Mr. M'Dougal, the senior partner, with Mr. Mackenzie and others, superintended the factory. They were soon informed of the success of the British arms, and of the blockade of the ports of the United States, by Messrs. M'Tavish and Laroque, partners of the North-west Company, who visited Astoria early in 1813, with a small detachment of persons in the employment of that company, and opened negotiations with M'Dougal and Mackenzie for the dissolution of the Pacific Fur Company, and the abandonment of the establishment at Astoria. The association was in consequence formally dissolved in July, 1813; and on the 16th of October following, an agreement

Pacific Fur Company dissolved.

was executed between Messrs. M'Tavish and John Stuart, on the part of the North-west Company, and Messrs. M'Dougal, Mackenzie, David Stuart, and Clarke, on the part of the Pacific Fur Company, by which all the establishments, furs, and stock in hand of the late Pacific Fur Company were transferred to the North-west Company, at a given valuation, which produced, according to Mr. Greenhow, a sum total of 58,000 dollars. It may be observed, that four partners only of the Pacific Fur Company appear to have been parties to this agreement; but they constituted the entire body which remained at Astoria, Mr. Hunt being absent, as already stated, and Messrs. Crooks, Maclellan, and R. Stuart, having returned over-land to New York in the spring of 1813.

Transfer of Astoria.

The bargain had hardly been concluded when the British sloop of war, the Racoon, under the command of Captain Black, entered the Columbia river, with the express purpose of destroying the settlement at Astoria; but the establishment had previously become the property of the North-west Company, and was in the hands of their agents. All that remained for Captain Black to perform, was to hoist the British ensign over the factory, the name of which he changed to Fort George.

Arrival of the Racoon.

Mr. M'Dougal and the majority of the persons who had been employed by the Pacific Fur Company, passed into the service of the North-west Company; and the agents of the latter body, with the aid of supplies from England, which arrived in 1814, were enabled to extend the field of their operations, and to establish themselves firmly in the country, undisturbed by any rivals.

CHAPTER II.

ON THE DISCOVERY OF THE NORTH-WEST COAST OF AMERICA.

Voyage of Francisco de Ulloa, in 1539. — Cabrillo, in 1542. — Drake, in 1577–80. — The Famous Voyage. — The World Encompassed. Nuño da Silva. — Edward Cliffe. — Francis Pretty not the Author of the Famous Voyage. — Fleurieu. — Pretty the Author of the Voyage of Cavendish. — Purchas' Pilgrims. — Notes of Fletcher. — World Encompassed published in 1628. — Mr. Greenhow's Mistake in respect to the World Encompassed and the Famous Voyage. — Agreement between the World Encompassed and the Narrative of Da Silva. — Fletcher's Manuscript in the Sloane Collection of the British Museum. — Furthest Limit southward of Drake's Voyage. — Northern Limit 43° and upwards by the Famous Voyage, 48° by the World Encompassed. — The latter confirmed by Stow, the Annalist, in 1592, and by John Davis, the Navigator, in 1595, and by Sir W. Monson in his Naval Tracts. — Camden's Life of Elizabeth. — Dr. Johnson's Life of Sir F. Drake. — Fleurieu's Introduction to Marchand's Voyage. — Introduction to the Voyage of Galiano and Valdés. — Alexander von Humboldt's New Spain.

THE Spaniards justly lay claim to the discovery of a considerable portion of the north-west coast of America. An expedition from Acapulco under Francisco de Ulloa, in 1539, first determined California to be a peninsula, by exploring the Gulf of California from La Paz to its northern extremity. The chart, which Domingo del Castillo, the pilot of Ulloa, drew up as the result of this voyage, differs very slightly, according to Alexander von Humboldt, from those of the present day. Ulloa subsequently explored the western coast of California. Of the

Francisco de Ulloa.

extent of his discoveries on this occasion there are contradictory accounts, but the extreme limit assigned to them does not reach further north than Cape Engaño, in 30° north latitude.

Cabrillo. In the spring of the following year, 1542, two vessels were despatched under Juan Rodriguez Cabrillo from the port of Navidad. He examined the coast of California as far north as 37° 10′, when he was driven back by a storm to the island of San Bernardo, in 34°, where he died. His pilot, Bartolemé Ferrelo, continued his course northwards after the death of his commander. The most northern point of land mentioned in the accounts of the expedition which have been preserved, was Cabo de Fortunas, placed by Ferrelo in 41°, which is supposed by Mr. Greenhow to have been the headland in 40° 20′, to which the name of C. Mendocino was given, in honour of the viceroy, Mendoza. Other authors, however, whose opinion is entitled to consideration, maintain that Ferrelo discovered Cape Blanco in 43°, to which Vancouver subsequently gave the name of Cape Orford. (Humboldt, Essai Politique sur la Nouvelle Espagne, l. iii. c. viii. Introduccion al Relacion del Viage hecho por las Goletas Sutil y Mexicana en el año de 1792.)

The Bull of Pope Alexander VI., as is well known, gave to Ferdinand and Isabella of Spain all the New World to the westward of a meridian line drawn a hundred leagues west of the Azores. When England, however, shook off the yoke of the Papacy, she refused to admit the validity of Spanish titles when based only on such concessions. Elizabeth, for instance, expressly refused to acknowledge

"any title in the Spaniards by donation of the Bishop of Rome, to places of which they were not in actual possession, and she did not understand why, therefore, either her subjects, or those of any other European prince, should be debarred from traffic in the Indies." In accordance with such a policy, Sir Francis Drake obtained, through the interest of Sir Christopher Hatton, the vice-chamberlain of the Queen, her approval of an expedition projected by him into the South Sea. He set sail from Plymouth in 1577, passed through the Straits of Magellan in the autumn of 1578, and ravaged the coast of Mexico in the spring of 1579. Being justly apprehensive that the Spaniards would intercept him if he should attempt to repass Magellan's Straits with his rich booty, and being likewise reluctant to encounter again the dangers of that channel, he determined to attempt the discovery of a north-east passage from the South Sea into the Atlantic by the reported Straits of Anian. Francis Drake.

There are two accounts, professedly complete, of Drake's Voyage. The earliest of these first occurs in Hakluyt's Collection of Voyages, published in 1589, and is intitled "The Famous Voyage of Sir Francis Drake into the South Sea, and there-hence about the whole Globe of the Earth, begun in the yeere of our Lord 1577." It was republished, by Hakluyt, with some alterations, in his subsequent edition of 1598–1600, and may be most readily referred to in the fourth volume of the reprint of this latter edition, published in 1811. The other account is intitled "The World Encompassed by Sir Francis Drake, collected out of the notes of Mr. Francis The Famous Voyage. The World Encompassed.

Fletcher, Preacher in this employment, and compared with divers others' Notes that went in the same Voyage." This work was first published in 1628, by Nicholas Bourne, and "sold at his shop at the Royal Exchange." It appears to have been compiled by Francis Drake, the nephew of the circumnavigator, as a dedication "to the truly noble Robert Earl of Warwick" is prefixed, with his name attached to it. It will be found most readily in the second volume of the Harleian collection of voyages. There are also to be found in Hakluyt's fourth volume, two independent, but unfortunately imperfect, narratives, one by Nuño da Silva, the Portuguese pilot, who was pressed by Sir F. Drake into his service at St. Jago, one of the Cape Verde islands, and discharged at Guatulco, where his account terminates; the other by Edward Cliffe, a mariner on board the ship Elizabeth, commanded by Mr. John Winter, one of Drake's squadron, which parted company from him on the west coast of South America, immediately after passing through the Straits of Magellan. The Elizabeth succeeded in repassing the straits, and arrived safe at Ilfracombe on June 2d, 1579; and Mr. Cliffe's narrative, being confined to the voyage of his own ship, is consequently the least complete of all, in respect to Drake's adventures.

Nuño da Silva.

Edward Cliffe.

It is a disputed point, whether Drake, in his attempt to find a passage to the Atlantic by the north of California, reached the latitude of 48° or 43°. The Famous Voyage is the account on which the advocates for the lower latitude of 43° rely. The World Encompassed, supported by Stow the

annalist and two independent naval authorities, contemporaries of Sir F. Drake, is quoted in favour of the higher latitude of 48°. Before examining the internal evidence of the two accounts, it may be as well to consider the authority which is due to them from external circumstances, as Mr. Greenhow's account of the two works is calculated to mislead the judgment of the reader in this respect.

The Famous Voyage.

Mr. Greenhow, (p. 73.) in referring to the Famous Voyage, says that it was "written by Francis Pretty, one of the crew of Drake's vessel, at the request of Hakluyt, and published by him in 1589. It is a plain and succinct account of what the writer saw, or believed to have occurred, during the voyage, and bears all the marks of truth and authenticity."

This statement could not but excite some surprise, as the Famous Voyage has no author's name attached to it, either in the first edition of 1589, or in any of the later editions of Hakluyt, the more so because Hakluyt himself, in his Address to the favourable reader, prefixed to the edition of 1589, leads us to suppose that he was himself the author of the work. "For the conclusion of all, the memorable voyage of Master Thomas Candish into the South Sea, and from thence about the Globe of the Earth doth satisfie me, and I doubt not but will fully content thee, which as in time it is later than that of Sir Francis Drake, so in relation of the Philippines, Japan, China, and the isle of St. Helena, it is more particular and exact; and therefore the want of the first made by Sir Francis Drake will be the lesse; *wherein I must confess to*

have taken more than ordinary paines, meaning to have inserted it in this worke; but being of late (contrary to my expectation) seriously dealt with-all, not to anticipate or prevent another man's paines and charge in drawing all the services of that worthie knight into one volume, I have yeelded unto those my freindes which pressed me in the matter, referring the further knowledge of his proceedings to those intended discourses."

Hakluyt, however, appears to have had the narrative privately printed, and, contrary to the intention which he entertained at the time when he wrote his preface, and compiled his table of contents, and the index of his first edition, in neither of which is there any reference to the Famous Voyage, he has inserted the Famous Voyage between pages 643. and 644., evidently as an interpolation. It is nowhere stated that any copy of this edition exists, in which this interpolation does not occur. It is alluded to by Lowndes in his Bibliographical Manual, vol. ii. p. 853., art. "Hakluyt." It is printed apparently on the same kind of paper, with the same kind of ink, and in the same kind of type with the rest of the work, but the signatures at the bottom of the pages, by which term are meant the numbers which are placed on the sheets for the printer's guidance, do not correspond with the general order of the signatures of the work. This fact, combined with the circumstance that the pages are not numbered, furnishes a strong presumption that it was printed subsequently to the rest of the work. On the other hand there is evidence that it was printed to bind up with the rest, from the circumstance that at the

bottom of the last page the word "Instructions" is printed to correspond with the first word at the top of p. 644., being the title of the next treatise,— "Instructions given by the Honorable the Lords of the Counsell to Edward Fenton, Esq., for the order to be observed in the voyage recommended to him for the East Indies, and Cathay, April 9, 1582."

Hakluyt.

It can hardly be doubted that this account is the narrative about which Hakluyt himself "had taken more than ordinary paines." Hakluyt, as is well known, was a student of Christ Church, Oxford, who, like his imitator Purchas, was imbued with a strong natural bias towards geographical studies, and himself compiled many of the narratives which his collection contained.

Francis Pretty.

This inference as to the authorship of the Famous Voyage, drawn from the allusion in Hakluyt's preface to the work, will probably appear to many minds more justifiable, if the claim set up in behalf of Francis Pretty can be shown to be utterly without foundation. It may be as well, therefore, to dispose of this at once. What may have been Mr. Greenhow's authority it would be difficult to say, though it may be conjectured, from another circumstance which will be stated below, that he has been misled by an incorrect article on Sir Francis Drake in the Biographie Universelle. M. Eyriés, the writer of this article, refers to Fleurieu as his authority. Fleurieu, however, who was a distinguished French hydrographer, and edited, in Paris, in the year VIII (1800) a work intitled "Voyage autour du monde, par Etienne Marchand," with which he published some observations of his own, intitled

Fleurieu.

"Recherches sur les terres de Drake," enumerates briefly in the latter work the different accounts of Drake's voyage, but he no where mentions the name of the author of the Famous Voyage. Fleurieu's information, indeed, was not in every respect accurate, as he states that the edition of Hakluyt which contained the Famous Voyage "ne parut à Londres qu'en 1600." What he says, however, of the author, is comprised in a short note to this effect:— "Le gentilhomme Picard, (employé sur l'escadre de Drake) auteur de cette relation, en ayant remis une copie au Baron de St. Simon, Seigneur de Courtomer, celui-ci engagea François de Louvencourt, Seigneur de Vauchelles, à en faire un extrait en Français sous le titre de 'le Voyage Curieux faict autour du monde par François Drach, Admiral d'Angleterre,' qui fut imprimé chez Gesselin, Paris, 1627, en 8vo."

It might be supposed from this statement, that the work of M. de Louvencourt would disclose the name of the gentleman of Picardy, who had been the companion of Drake; but on referring to the edition just cited of the French translation, the only allusion to Drake's companion which is to be found in the work, occurs in a few words forming part of the dedication to M. de St. Simon:— "Or, Monsieur, je le vous dédie, parceque c'est vous que m'aviez donné, m'ayant fait entendre, que vous l'aviez eu d'un de vos sujets de Courtomer, qui a fait le même voyage avec ce seigneur." Nothing further can safely be inferred from this, than that M. de St. Simon received the English copy, which M. de Louvencourt made use of, from one of his

vassals who had accompanied Drake in his expedition; but whether this Picard subject of the lord of Courtomer was the author of the narrative, does not appear from the meagre dedication, which seems to have been the basis upon which Fleurieu's statement was founded.

Fleurieu refers to the Famous Voyage as printed in duodecimo, in London, in the year 1600. This edition, however, cannot be traced in the catalogue of the British Museum or the Bodleian Library, nor does Watt refer to it in his Bibliotheca Britannica: but Fleurieu may have had authority for his statement, though the size of the edition is at least suspicious. Even the French translation of 1627, of which there was an earlier edition in 1613, apparently unknown to Fleurieu, is in 8vo, and an English edition of the Famous Voyage, slightly modified, which was published in London in 1752, and may be found in the British Museum, is a very mean pamphlet, though in 8vo. The separate editions likewise of Drake's other voyages which are to be met with in public libraries are in small quarto, so that there would be no argument from analogy in favour of an edition in 12mo. The fact, however, of its having disappeared, might perhaps be urged as a sign of the insignificance of the edition.

It is very immaterial, even if Fleurieu has hazarded a hasty statement in respect to there having been a separate edition of the Famous Voyage as early as 1600. Thus much, at least, is certain, that Fleurieu is incorrect in stating that the edition of Hakluyt, in which it was inserted, did not

appear before 1600; for a careful comparison between the French translation, and the respective English editions of 1589 and 1600, furnishes conclusive evidence that M. de Louvencourt's translation was made from the narrative in the edition of 1589. Two examples will suffice. The edition of 1589 gives 55½ degrees of southern latitude, and 42 degrees of northern latitude, as the extreme limits of Drake's voyage towards the two poles, which the French translation follows; whilst the edition of 1600 gives 57½ degrees of southern latitude, and 43 degrees of northern latitude, as the southern and northern extremes. There can therefore be little doubt that the work, which M. de Louvencourt translated, was the narrative about which Hakluyt himself had taken no ordinary pains; and which he printed separately from his general collection of voyages, so that it might be circulated privately, though he incorporated it into the work after it was completed.

So far, indeed, are we from finding any good authority for attributing the authorship of the Famous Voyage of Sir Francis Drake to Francis Pretty, one of his crew, as unhesitatingly advanced by Mr. Greenhow, that, on the contrary, there is the strongest negative evidence that it was not written by a person of that name, unless we are prepared to admit that there were two individuals of that name, the one a native of Picardy, and vassal of the Sieur de Courtomer, the other an English gentleman, "of Ey in Suffolke;" the one a companion of Drake, in his voyage round the world in 1577–80, the other a companion of Cavendish, in

his voyage round the world in 1586–88; the one the author of the Famous Voyage of Sir Francis Drake, the other the writer of the Admirable and Prosperous Voyage of the Worshipful Master Thomas Candish.

Voyage of Thomas Cavendish.

Hakluyt, in his edition of 1589, gave merely "The Worthy and Famous Voyage of Master Thomas Candishe, made round about the Globe of the Earth in the space of two yeeres and lesse than two months, begon in the yeere 1586," which is subscribed at the end, "written by N. H.;" but in his edition of 1600 he published a fuller and more complete narrative, intitled "The Admirable and Prosperous Voyage of the Worshipfull Master Thomas Candish, of Frimley, in the Countie of Suffolke, Esquire, into the South Sea, and from thence round about the circumference of the whole earth; begun in the yeere of our Lord 1586, and finished 1588. Written by Master Francis Pretty, lately of Ey, in Suffolke, a gentleman employed in the same action." The author, in the course of the narrative, styles himself Francis Pretie, and says that he was one of the crew of the "Hugh Gallant, a barke of 40 tunnes," which with the Desire, of 120, and the Content, of 60 tons, made up Cavendish's small fleet. This Suffolk gentleman, for several reasons, could not be the same individual as the Picard vassal of the lord of Courtomer, nor is it probable that he ever formed part of the crew of Drake's vessel in the Famous Voyage, as he no where alludes to the circumstance, when he speaks of places which Drake visited, nor even when he describes the hull of a small bark, pointed out to them by a Spaniard, whom

they had lately taken on board, in the narrowest part of the Straits of Magellan, "which we judged to be a barke called the John Thomas." Now it is contrary to all probability that the writer of this passage should have been one of Drake's crew, for the vessel, whose hull was seen on this occasion, was the Marigold, a bark of 50 tons, which had formed one of Drake's fleet of five vessels, and had been commanded by Captain John Thomas, which fact would have been known to one of Drake's companions, who could never have committed so gross a blunder as to confound the name of the ship with the name of the captain. That the circumstances of the loss of the Marigold made no slight impression upon the minds of Drake's companions, is shown from its being alluded to in all the narratives of Nuño da Silva, Cliffe, and Fletcher, without exception.

Drake had succeeded in passing the Straits of Magellan with three of his vessels: the Golden Hind, his own ship; the Elizabeth, commanded by Captain Winter; and the Marigold, by Captain Thomas. On the 30th of September, 1578, the Marigold parted from them in a gale of wind, and was wrecked in the straits. On the 7th of October the Elizabeth likewise parted company from the Admiral; she, however, succeeded in making her way back through the straits, and arrived safe at Ilfracombe on the 7th June, 1579. It is singular that, in all the three accounts, which are known to be written by companions of Drake, the separation of the Marigold, as well as of the Elizabeth, is alluded to; whereas, in the Famous Voyage, there is

no allusion to the loss of the Marigold, but only to the separation of the Elizabeth, whose safe arrival in England made the fact notorious. If Hakluyt wrote the Famous Voyage, the general notoriety of the separate return of the Elizabeth would account for his not overlooking that circumstance, whilst he omitted all allusion to the Marigold, about which his information would be comparatively imperfect. If one of Drake's own crew was the author, it is difficult to suppose that he would have carefully alluded to "their losing sight of their consort, in which Mr. Winter was," who did not perish, and should omit all mention of the loss of the Marigold, which is spoken of in the World Encompassed "as the sorrowful separation of the Marigold from us, in which was Captain John Thomas, with many others of our dear friends."

The course of this inquiry seems to justify the following conclusions: that the "Famous Voyage of Sir Francis Drake" is, strictly speaking, an anonymous work; that it is very improbable that it was compiled by one of Drake's crew; on the contrary, Hakluyt's own preface to his edition of 1589 seems to warrant us in supposing that he had himself been employed in preparing the narrative, which he printed separately from the rest of his work, but subsequently inserted into it. Hakluyt had most probably procured information from original sources, but he had certainly not access, in 1589, to what he subsequently considered to be more trustworthy sources, for he made various alterations in his narrative, in his edition of 1600. There is assuredly not the slightest ground for attributing it to Francis Pretty;

and if M. Eyriés was the originator of this mistake, he must undoubtedly have confounded the Famous Voyage of Drake with the Famous Voyage of Candish. All that can be inferred from M. de Louvencourt's dedication of his French translation to M. de St. Simon is, that the Lord of Courtomer had received the English original from one of his vassals, who had sailed with Drake; but the most ingenious interpretation of his words will not warrant us in inferring that the donor was likewise the author of the work.

It may be not unworthy of remark, that Purchas, in the fifth volume of his Pilgrims, (p. 1181.) gives a list of persons known to the world as the companions of Drake, in which the name of Francis Pretty is not found. "Men noted to have compassed the world with Drake, which have come to my hands, are Thomas Drake, brother to Sir Francis, Thomas Hood, Thomas Blaccoler, John Gripe, George a musician, Crane, Fletcher, Cary, Moore, John Drake, John Thomas, Robert Winterly, Oliver the gunner, &c." It would be a reflection upon the well-known pains-taking research of Purchas, to suppose that he would have omitted from his list the name of the author of the Famous Voyage, had he been really one of Drake's crew.

The other narrative, which is far more full and complete than the Famous Voyage, is intitled "The World Encompassed." It was published under the superintendence of Francis Drake, a nephew of the Admiral, if not compiled by him; the foundation of it, as stated in the title, seems to have been the notes of Francis Fletcher, the chaplain of Drake's

Notes of Francis Fletcher.

vessel, " compared with divers others' notes that went in the same voyage." Fleurieu, in speaking of this work, says: " Celle-ci est le récit d'un témoin oculaire: et la fonction qu'il remplissait à bord du vaisseau amiral pourrait faire présumer que, s'il n'était pas l'homme de la flotte le plus expérimenté dans l'art de la navigation, du moins il devait être celui que les études exigées de sa profession avaient mis le plus à portée d'acquérir quelques connaissances, et qui pouvait le mieux exprimer ce qu'il avait vu." (Recherches sur les terres australes de Drake, p. 227.)

Fleurieu, in further illustration of the probable fitness of Fletcher for his task, refers to the excellent account of Anson's Voyages, written by his chaplain, R. Walter, and to the valuable treatise on naval evolutions, compiled by the Jesuit Paul Hoste, the chaplain of Tourville.

The earliest edition of " The World Encompassed" appeared in 1628, and a copy of this date is to be found in the Bodleian Library, at Oxford. It was printed for Nicholas Bourne, as " the next voyage to that to Nombre de Dios, in 1572, formerly imprinted." A second edition was printed in 1635, and is in the King's Library at the British Museum. A third edition was published in 1652, and may be found in the Library of the British Museum. It was therefore impossible not to feel surprise at Mr. Greenhow's deliberately stating, that this work was not published before 1652, the more so as Watts in his Bibliotheca Britannica refers to the first edition of 1628. It is the coincidence of this second error, which warrants the supposition that

The World Encompassed.

Mr. Greenhow has placed too implicit a faith in the writer of the article upon Drake, in the Biographie Universelle. M. Eyriés, the author of that article, there writes, "Un autre ouvrage original est celui qui fut composé sur les mémoires de Francis Fletcher, chapelain sur le vaisseau de Drake. Ces mémoires furent comparés et fondus avec ceux de plusieurs autres personnes qui avaient été employées dans la même expédition; le résultat de ce travail parut sous ce titre: The World Encompassed, by Sir F. Drake, collected out of the notes of Master F. F., preacher in this employment, and others. Londres, 1652, 8vo." There is another slight error in this statement, as the work is a small 4to, not an 8vo.

The errors of Mr. Greenhow.

It has been deemed the more necessary to point out carefully the errors of Mr. Greenhow, in regard to these two narratives, because he contrasts them expressly (p. 74.), as "the one proceeding entirely from a person who had accompanied Drake in his expedition, and published in 1589, during the life of the hero; the other compiled from various accounts, and not given to the world until the middle of the following century."

In respect to the narrative of the World Encompassed, Mr. Greenhow thus expresses himself:—"It is a long and diffuse account, filled with dull and generally absurd speculations, and containing, moreover, a number of statements, which are positive and evidently wilful falsehoods; yet it contains scarcely a single fact not related in the Famous Voyage, from which many sentences and paragraphs are taken verbatim, while others convey the

same meaning in different terms. The journal, or supposed journal of Fletcher's, remains in manuscript in the British Museum: and from it were derived the false statements above mentioned, according to Barrow, who consulted it."

Mr. Greenhow's opinion of the length and diffuseness of the narrative, and of the dullness and general absurdity of the speculations, will probably be acquiesced in by those who have read the World Encompassed, but the rest of his observations have been made at random. The World Encompassed does not profess to be an original work, but to be a compilation from the notes of several who went the voyage. It is therefore highly probable that the compiler had before him "The Famous Voyage" amongst other narratives, and we should be prepared to find many statements alike in the two accounts. But it seems hard to suppose with Mr. Greenhow, that, where the World Encompassed differs from the Famous Voyage, the statements are "positive and evidently wilful falsehoods." There are several statements, for instance, where the two narratives differ, and where the World Encompassed agrees with Nuño da Silva's account, or with Cliffe's narrative.

For instance, on the second day after clearing the Straits of Magellan, on Sept. 7th, a violent gale came on from the north-east, which drove Drake's three vessels, the Golden Hind, the Elizabeth, and the Marigold, to the height of 57° south according to Cliffe, and about 200 leagues in longitude west of the strait, according to the Famous Voyage. They could make no head against the gale

for three weeks, and during that interval there was an eclipse of the moon, which is alluded to in all the narratives. According to Nuño da Silva, they lay driving about without venturing to hoist a sail till the last day of September, and about this time lost sight of the Marigold. The Elizabeth still kept company with the Golden Hind, but on or before October 7th, Drake's vessel parted from her consort. We now come to a very important event in Drake's voyage, which would seem to be one of the supposed "positive and evidently wilful falsehoods," to which Mr. Greenhow alludes.

The Famous Voyage conducts Sir F. Drake in a continuous course north-westward, after losing sight of the Elizabeth, to the island of Mocha, in 38° 30′ south, whereas the World Encompassed says, that "Drake, being driven from the Bay of the Parting of Friends out into the open sea, was carried back again to the southward into 55° south, on which height they found shelter for two days amongst the islands, but were again driven further to the southward, and at length fell in with the uttermost part of land towards the South Pole," in about 56° south. Here Fletcher himself landed, and travelled to the southernmost point of the island, beyond which there was neither continent nor island, but one wide ocean. We altered the name, says Fletcher in his MS. journal, from Terra Incognita, to Terra nunc bene Cognita. Now this account in the World Encompassed, varying so totally from that in the Famous Voyage, is fully borne out by the positive evidence of Nuño da Silva, who says, that after losing sight of an-

Southern Terra Incognita.

other ship of their company, the Admiral's ship being now left alone, with this foul weather they ran till they were under 57°, where they entered into the haven of an island, and stayed there three or four days. The Famous Voyage would lead the reader to suppose, that after leaving the Bay of Severing of Friends, the Elizabeth and Golden Hind were driven in company to 57° 20′ south; but it is altogether contrary to probability that Cliffe should have omitted the fact of the Elizabeth having been in company with Drake when he discovered the southernmost point of land, had such been the case. The author of the Famous Voyage has evidently mixed up the events of the gale in the month of September with those of the storm after the 8th of October. This is a very striking instance of the truth of Captain W. Burney's remark, "that the author of the Famous Voyage seems purposely, on some occasions, to introduce confusion as a cloak for ignorance."

Again, the World Encompassed mentions that Drake was badly wounded in the face with an arrow by the natives in the island of Mocha, about which the Famous Voyage is altogether silent, but Nuño da Silva confirms this statement. Other instances might be cited to the like purport.

Mr. Greenhow, at the end of his note already cited, says, "The journal or supposed journal of Fletcher remains in MS. in the British Museum, and from it were derived the false statements above mentioned, according to Barrow, who consulted it." Mr. Greenhow has nowhere particularised what these false statements are, unless he means that the

statements are false which are at variance with the Famous Voyage. It is evident, however, that such a view assumes the whole point at issue between the two narratives to be decided upon internal evidence in favour of the Famous Voyage, which a careful examination of the two accounts will not justify.

Manuscript of Francis Fletcher.

But it is incorrect to refer to Fletcher's journal, as the source of the assumed false statements in the World Encompassed. The manuscript to which Captain James Burney refers, in his Voyage of Sir Francis Drake round the world, as "the manuscript relation of Francis Fletcher, minister, in the British Musuem," forms a part of the Sloane Collection, in which there is likewise a MS. of Drake's previous expedition to Nombre de Dios. It is not, however, properly speaking, a MS. of Fletcher's, but a MS. copy of Fletcher's MS. It bears upon the fly-leaf the words, "e libris Joh. Conyers, Pharmacopolist, — Memorandum, Hakluyt's Voyages of Fletcher." Its title runs thus: "The First part of the Second Voyage about the World, attempted, contrived, and happily accomplished, to wit, in the time of three years, by Mr. Francis Drake, at her Highness's command, and his company: written and faithfully laid down by Ffrancis Ffletcher, Minister of Christ and Presbyter of the Gospel, adventurer and traveller in the same voyage." On the second page is a map of England, and above it these words: "This is a map of England, an exact copy of the original to a hair; that done by Mr. Ffrancis Ffletcher, in Queen Elizabeth's time; it is copied by Jo. Conyers, citizen

and apothecary of London, together with the rest, and by the same hand, as follows."

The work appears to have been very carefully executed by Conyers, and is illustrated with rude maps and drawings of plants, boats, instruments of music and warfare, strange animals, such as the Vitulus marinus and others, which are referred to in the text of the MS. opposite to which they are generally depicted, and each is specially vouched to be a faithful copy of Fletcher's MS.

There is no date assigned to Fletcher's own MS., but we might fairly be warranted in referring it to a period almost immediately subsequent to the happy accomplishment of the voyage, from the leader of the company being spoken of as "Mr. Francis Drake." The Golden Hind reached England in November, 1580, and Drake was knighted by Queen Elizabeth in April, 1581; there was then an interval of four months, during which the circumstances of his voyage and his conduct were under the consideration of the Queen's Council, and Fletcher may have completed his journal before their favourable decision led to Drake's receiving the honour of knighthood. On comparing the World Encompassed with this MS., it will be found that most of the speculations, discussions, and fine writing in the World Encompassed have emanated from the nephew of the hero, or whoever may have been the compiler of the work, and have not been derived from this MS., which is written in rather a sober style, and is much less diffuse than might reasonably be expected. Fletcher's imagination seems certainly to have been much affected by the

giant stature of the Patagonians, and by the terrible tempest which dispersed the fleet after it had cleared the Straits of Magellan. In respect to the Patagonians, Cliffe, it must be allowed, says, they were "of a mean stature, well limbed, and of a duskish tawnie or browne colour." On the other hand, Nuño da Silva says, they were "a subtle, great, and well-formed people, and strong and high of stature." Whichever of the two accounts be the more correct, this circumstance is certain, that four of the natives beat back six of Drake's sailors, and slew with their arrows two of them, the one an Englishman and the other a Netherlander, so that they could be no mean antagonists. In respect to the tempest, the events of it must have with reason fixed themselves deep into Fletcher's memory, for he writes in his journal, "About which time the storm being so outrageous and furious, the barke Marigold, wherein Edward Bright, one of the accusers of Thomas Doughty, was captain, with 28 souls, was swallowed up, which chanced in the second watch of the night, wherein myself and John Brewer, our trumpeter, being watch, did hear their fearful cries continued without hope, &c."

Limit of Drake's expedition to the north.

There is a greater discrepancy between the Famous Voyage and the World Encompassed, as to the furthest limit of Drake's expedition to the north of the equator, than, as already shown, in regard to the southern limit. We have here, unfortunately, no independent narrative to appeal to in support of either statement, as the Portuguese pilot was dismissed by Drake at Guatulco, and did not accompany him further. Hakluyt himself does

not follow the same version of the story in the two editions of his narrative. In the Famous Voyage, as interpolated in the edition of 1589, he gives $55\frac{1}{2}°$ south, as the furthest limit southward; but in the edition of 1600, he gives $57\frac{1}{2}°$; in a similar manner we find 42° north, as the highest northern limit mentioned in the edition of 1589, whilst in that of 1600 it is extended to 43°. Hakluyt thus seems to have found that his earlier information was not to be implicitly relied upon, but we have no clue to the fresh sources to which he had at a later period found access. The World Encompassed, on the other hand, continues Drake's course up to the 48th parallel of north latitude. The two narratives, however, do not appear to be altogether irreconcilable. In the Famous Voyage, as amended in the edition of 1600, we have this statement: — "We therefore set sail, and sayled (in longitude) 600 leagues at the least for a good winde, and thus much we sayled from the 16 of April till the 3 of June. The 5 day of June, being in 43 degrees towards the pole arcticke, we found the ayre so colde that our men, being greevously pinched with the same, complained of the extremitie thereof, and *the further we went, the more the cold increased upon us.* Whereupon we thought it best for that time to seek the land, and did so, finding it not mountainous, but low plaine land, till we came within 38 degrees towards the line. In which height it pleased God to send us into a faire and good baye, with a good winde to enter the same."

Famous Voyage.

It will be seen from this account, that it was in the 43d, or, as in the earlier edition of 1589, the

42d parallel of north lat., that the cold was first felt so intensely by Drake's crew, and that the further they went, the more the cold increased upon them; so that from the latter passage it may be inferred that they did not discontinue their course at once as soon as they reached the 43d parallel.

It appears, likewise, that Drake, from the nature of the wind, was obliged to gain a considerable offing, before he could stand towards the northward: 600 leagues *in longitude*, according to the first edition (the second edition omitting the words 'in longitude'), which does not differ much from the World Encompassed. The latter states, — "From Guatulco, or Aquatulco, we departed the day following, viz. April 16, setting our course directly into the sea, whereupon we sailed 500 leagues in longitude to get a wind; and between that and June 3, 1400 leagues in all, till we came into 42 degrees of latitude, where the night following we found such an alteration of heat into extreme and nipping cold, that our men in general did grievously complain thereof."

The World Encompassed.

The cold seems to have increased to that extremity that, in sailing two degrees further north, the ropes and tackling of the ship were quite stiffened. The crew became much disheartened, but Drake encouraged them, so that they resolved to endure the uttermost. On the 5th of June they were forced by contrary winds to run into an ill-sheltered bay, where they were enveloped in thick fogs, and the cold becoming still more severe, "commanded them to the southward whether they would or no." "From the height of 48

degrees, in which now we were, to 38, we found the land by coasting along it to be but low and reasonable plain: every hill (whereof we saw many, but none very high), though it were in June, and the sun in his nearest approach to them, being covered with snow. In 38° 30′ we fell in with a convenient and fit harbour, and June 17th came to anchor therein, where we continued till the 23d day of July following."

The writer of this account, in another paragraph, confirms the above statement by saying, "add to this, that though we searched the coast diligently, even unto 48°, yet found we not the land to trend so much as one point in any place towards the East, but rather running on continually north-west, as if it went directly into Asia."

Mr. Greenhow's objections.

Mr. Greenhow is disposed to reject the statement of the World Encompassed, for two reasons: first, because it is improbable that a vessel like Drake's could have sailed through six degrees of latitude from the 3d to the 5th of June; secondly, because it is impossible that such intense cold could be experienced in that part of the Pacific in the month of June, as is implied by the circumstances narrated, and therefore they must be "direct falsehoods."

The first objection has certainly some reason in it; but in rejecting the World Encompassed, Mr. Greenhow adopts the Famous Voyage as the true narrative, so that it becomes necessary to see whether Hakluyt's account is not exposed to objections equally grave.

Hakluyt agrees with the author of the World Encompassed, in dating Drake's arrival at a conve-

nient harbour on June 17.—(Hakluyt gives this date in vol. iii. p. 524.)—so that Drake would have consumed twelve days in running back three and a half degrees, according to one version of the Famous Voyage, and four and a half degrees according to the other, before a wind which was so violent that he could not continue to beat against it. There is no doubt about the situation of the port where Drake took shelter, at least within half a degree, that it was either the Port de la Bodega, in 38° 28′, as some have with good reason supposed (Maurelle's Journal, p. 526., in Barrington's Miscellanies), or the Port de los Reyes, situated between La Bodega and Port San Francisco, in about 38°, as the Spaniards assert; and there is no difference in the two stories in respect to the interval which elapsed after Drake turned back, until he reached the port. There is, therefore, the improbability of Drake's vessel, according to Hakluyt, making so little way in so long a time *before* a wind, to be set off against the improbability of its making, according to the World Encompassed, so much way in so short a time *on* a wind, the wind blowing undoubtedly all this time very violently from the north-west. Many persons may be disposed to think that the two improbabilities balance each other.

Intense cold.

In respect to the intense cold, it must be remembered that the Famous Voyage, equally with the World Encompassed, refers to the great extremity of the cold as the cause of Drake's drawing back again till he reached 38°. There can, therefore, be no doubt that Drake did turn back on account of his men being unable to bear up against the cold,

after having so lately come out of the extreme heat of the tropics. Is it more probable that this intense cold should have been experienced in the higher or the lower latitude? for the intense cold must be admitted to be a fact. Drake seems to have been exposed to one of those severe winds termed *Northers*, which in the early part of the summer bring down the atmosphere, even at New Orleans and Mexico, to the temperature of winter; but without seeking to account for the cold, as that would be foreign to the present inquiry, the fact, to whatever extent it be admitted, would rather support the statement that Drake reached the 48th parallel, than that he was constrained to turn back at the lower latitude of 43°.

Trending of the coast.

It may likewise be observed, that the description of the coast, "as trending continually northwestward, as if it went directly into Asia," would correspond with the 48th parallel, but be altogether at variance with the 43d; and it is admitted by all that Drake's object was to discover a passage from the western to the eastern coast of North America. His therefore finding the land not to trend so much as one point to the east, but, on the contrary, to the westward, whilst it fully accounts for his changing his course, determines also where he decided to return. It should not be forgotten that the statement in the World Encompassed, that the coast trended to the westward in 48°, was in contradiction of the popular opinion regarding the supposed Straits of Anian, and if it were not the fact, the author hazarded, without an adequate object, the rejection of this part of his narrative, and

unavoidably detracted from his own character for veracity.

We have, however, two cotemporaries of Sir Francis Drake, who confirm the statement of the World Encompassed. One of these has been strangely overlooked by Mr. Greenhow; namely, Stow the annalist, who, under the year 1580, gives an account of the return of Master Francis Drake to England, from his voyage round the world. "He passed" he says, "forth northward, till he came to the latitude of forty-seven, thinking to have come that way home, but being constrained by fogs and cold winds to forsake his purpose, came backward to the line ward the tenth of June, 1579, and stayed in the latitude of thirty-eight, to grave and trim his ship, until the five-and-twenty of July." This is evidently an account derived from sources quite distinct from those of either of the other two narratives. It occurs as early as 1592, in an edition of the Annals which is in the Bodleian Library at Oxford, so that it was circulated two years at least before Drake's death.

Stow, the annalist.

John Davis.

The World's Hydrographical Discovery.

The other authority is that of one of the most celebrated navigators of Drake's age, John Davis, of Sandrug by Dartmouth, who was the author of a work intitled "The World's Hydrographical Discovery." It was "imprinted at London, by Thomas Dawson, dwelling at the Three Cranes in the Vine-tree, in 1595," and may be found most readily in the 4th volume of the last edition of Hakluyt's Voyages. After giving some account of the dangers which Drake had surmounted in passing through the Straits of Magellan, which Davis had himself

sailed through three times, he proceeds to say, that "after Sir Francis Drake was entered into the South Seas, he coasted all the western shores of America, until he came into the septentrional latitude of forty-eight degrees, being on the back side of Newfoundland." Now Davis is certainly entitled to respectful attention, from his high character as a navigator. He had made three voyages in search of a north-west passage, and had given his name to Davis' Straits, as the discoverer of them; he had likewise been the companion of Cavendish in his last voyage into the South Seas, in 1591-93, when, having separated from Cavendish, he discovered the Falkland islands. He was therefore highly competent to form a correct judgment of the value of the accounts which he had received respecting Drake's voyage, nor was he likely, as a rival in the career of maritime discovery, to exaggerate the extent of it. We find him, on this occasion, deliberately adopting the account that Drake reached that portion of the north-west coast of America, which corresponded to Newfoundland on the north-east coast, or, as he distinctly says, the septentrional latitude of 48 degrees.

Davis, however, is not the only naval authority of that period who adopted this view, for Sir William Monson, who was admiral in the reign of Elizabeth and James I., and served in expeditions against the Spaniards under Drake, in his introduction to Sir Francis Drake's voyage round the world, praises him because "lastly and principally that after so many miseries and extremities he endured, and almost two years spent in unpractised

Sir W. Monson.

seas, when reason would have bid him sought home for his rest, he left his known course, and ventured upon an unknown sea in forty-eight degrees, which sea or passage we know had been often attempted by our seas, but never discovered." And in his brief review of Sir F. Drake's voyage round the world, he says, "From the 16th of April till the 5th of June he sailed without seeing land, and arrived in forty-eight degrees, thinking to find a passage into our seas, which land he named Albion." (Sir W. Monson's Naval Tracts, in Churchill's Collection of Voyages, vol. iii. pp. 367, 368.)

Mr. Greenhow (p. 75.) says, that Davis' assertion carries with it its own refutation, "as it is nowhere else pretended that Drake saw any part of the west coast of America between the 17th degree of latitude and the 38th." But surely Davis might use the expression, "coasted all the western shores of America," without being supposed to pretend that Drake kept in sight of the coast all the way. The objection seems to be rather verbal than substantial. Again, Sir W. Monson is charged by the same author with inconsistency, because he speaks of C. Mendocino as the "furthest land discovered," and the "furthermost known land." But Sir W. Monson is on this occasion discussing the probable advantages of a north-west passage as a saving of distance, and he is speaking of C. Mendocino, as the "furthermost known part of America," i.e. the furthermost headland from which a course might be measured to the Moluccas, and he is likewise referring especially to the voyage of Francisco Gali, so that this objection is more specious than solid.

It should likewise not be forgotten, that in the most approved maps of that day, in the last edition of Ortelius, for example, and in that of Hondius, which is given in Purchas' Pilgrims, C. Mendocino is the northernmost point of land of North America. It may also not be amiss to remark, that in the map which Mr. Hallam (in his Literature of Europe, vol. ii. c. viii. § v.) justly pronounces to be the best map of the sixteenth century, and which is one of uncommon rarity, Cabo Mendocino is the last headland marked upon the north-west coast of America, in about 43° north latitude. This map is found with a few copies of the edition of Hakluyt of 1589: in other copies, indeed, there is the usual inferior map, in which C. Mendocino is placed between 50° and 60°. The work, however, in which it has been examined for the present purpose, is Hakluyt's edition of 1600, in which it is sometimes found with Sir F. Drake's voyage traced out upon it: but in the copy in the Bodleian Library, no such voyage is observed; whilst the line of coast is continued above C. Mendocino and marked, in large letters, "Nova Albion." Thus Hakluyt himself, in adopting this map as "a true hydrographical description of so much of the world as hath been hitherto discovered and is common to our knowledge," has so far admitted that Nova Albion extended beyond the furthest land discovered by the Spaniards. On the other hand, Camden, in his Life of Elizabeth, first published in 1615, adopts the version of the story which Hakluyt had put forth in his earliest edition of the Famous Voyage, making the southern limit 55° south, and the northern 42° north, which Hakluyt has himself rejected

Camden.

in his later edition. There can be little doubt that Camden's account bears internal evidence of having been copied in the main from Hakluyt. Purchas, as we may gather from his work, merely followed Hakluyt.

In addition to these, Mr. Greenhow enumerates several comparatively recent authors as adopting Hakluyt's opinion. Of these, perhaps, Dr. Johnson has the greatest renown. He published a Life of Drake in parts, in five numbers of the Gentleman's Magazine for 1740-41. It was, however, amongst his earliest contributions, when he was little more than thirty years of age, and therefore is not entitled to all the weight which the opinion of Dr. Johnson at a later period of life might carry with it. But as it is, the passage, as it stands at present, seems to involve a clerical error. "From Guatulco, which lies in 15° 40′, they stood out to sea, and without approaching any land, sailed forward till on the night following the 3d of June, being then in the latitude of 38°, they were suddenly benumbed with such cold blasts that they were scarcely able to handle the ropes. This cold increased upon them, as they proceeded, to such a degree, that the sailors were discouraged from mounting upon deck; nor were the effects of the climate to be imputed to the warmth of the regions to which they had been lately accustomed, for the ropes were stiff with frost, and the meat could scarcely be conveyed warm to the table. On June 17th they came to anchor in 38° 30′."

Dr. Johnson.

In the original paper, as published in the Gen-

tleman's Magazine for January, 1741, Dr. Johnson writes 38° in numbers as the parallel of latitude where the cold was felt so acutely. This would be in a far lower latitude than what any of the accounts of Drake's own time gives; so that it may for that reason alone be suspected to be an error of the press, more particularly as Drake is made ultimately to anchor in 38° 30′, a higher latitude than that in which his crew were benumbed with the cold. We must either suppose that Dr. Johnson entirely misunderstood the narrative, and intentionally represented Drake as continuing his voyage northward in spite of the cold, and anchoring in a higher latitude than where his men were so much discouraged by its severity, or that there is a typographical error in the figures. The latter seems to be the more probable alternative; and if, in order to correct this error, we may reasonably have recourse to the authority from which he derived his information as to the latitude of the port where Drake cast anchor, it is to the World Encompassed, and not to the Famous Voyage, that we must refer; for it is the World Encompassed which gives us 38° 30′ as the latitude of the convenient and fit harbour, whereas the Famous Voyage sends Drake into a fair and good bay in 38°.

The dispute between Spain and Great Britain respecting the fur trade on the north-west coast of America having awakened the attention of the European powers to the value of discoveries in that quarter, a French expedition was in consequence despatched in 1790, under Captain Etienne Marchand, who, after examining some parts of the north-

west coast of America, concluded the circumnavigation of the globe in 1792. Fleurieu, the French hydrographer, published a full account of Marchand's Voyage, to which he prefaced an introduction, read before the French Institute in July, 1797. In this introduction he reviews briefly the course of maritime discovery in these parts, and states his opinion, without any qualification, that Sir Francis Drake made the land on the north-west coast of America in the latitude of 48 degrees, which no Spanish navigator had yet reached. Mr. Greenhow (p. 223.) speaks highly of Fleurieu's work, though he considers him to have been careless in the examination of his authorities. He observes, that "his devotion to his own country, and his contempt for the Spaniards and their government, led him frequently to make assertions and observations at variance with truth and justice." It may be added, that at the time when he composed his introduction, the relations of France and Great Britain were not of a kind to dispose him to favour unduly the claims of British navigators.

Marchand's Voyage.

Galiano and Valdés.

The same train of events which terminated in the Nootka Convention, led to a Spanish expedition under Galiano and Valdés, of which an account was published, by order of the king of Spain, at Madrid, in 1802. The introduction to it comprises a review of all the Spanish voyages of discovery along the north-west coast, in the course of which it is observed that, from want of sufficient information in Spanish history, certain foreign writers had undervalued the merit of Cabrillo, by assigning to Drake the discovery of the coast between 38° and

48°; whereas, thirty-six years before Drake's appearance on that coast, Cabrillo had discovered it between 38° and 43°. A note appended to this passage states, "The true glory which the English navigator may claim for himself is the having discovered the portion of coast comprehended between the parallels of 43° and 48°; to which, consequently, the denomination of New Albion ought to be limited, without interfering with the discoveries of preceding navigators." (Relacion del Viage hecho por las Goletas Sutil y Mexicana en el año de 1792. Introduccion, pp. xxxv. xxxvi.)

To the same purport, Alexander von Humboldt, in his Essai Politique sur la Nouvelle Espagne, says, "D'après des données historiques certaines, la dénomination de Nouvelle Albion devrait être restreinte à la partie de la côte qui s'étend depuis les 43° aux 48°, ou du Cap de Martin de Aguilar, à l'entrée de Juan de Fuca:" (l. iii. c. viii.) And, in another passage, "On trouve que Francisco Gali côtoya une partie de l'Archipel du prince de Galles ou celui du roi George (en 1582). Sir Francis Drake, en 1578, n'était parvenu que jusqu'aux 48° de latitude au nord du cap Grenville, dans la Nouvelle Georgie."

The question of the northern limits of Drake's expedition has been rather fully entered into on this occasion, because it is apprehended that Drake's visit constituted a *discovery* of that portion of the coast which was to the north of the furthest headland which Ferrelo reached in 1543, whether that headland were Cape Mendocino, or Cape Blanco; and because Mr. Greenhow, in the preface to the second

edition of his History of Oregon and Califonia, observes, that in the accounts and views there presented of Drake's visit to the north-west coast, all who had criticised his work were silent, or carefully omitted to notice the principal arguments adduced by the author. We may conclude with observing, that on reviewing the evidence it will be seen, that in favour of the higher latitude of 48° we have a well-authenticated account drawn up by the nephew of Sir Francis Drake himself, from the notes of several persons who went the voyage, confirmed by independent statements in two cotemporary writers, Stow the annalist, and Davis the navigator, and supported by the authority of Sir W. Monson, who served with Drake in the Spanish wars after his return; and on this side we find ranked the influential judgment of the ablest modern writers who have given their attention to the subject, such as the distinguished French hydrographer Fleurieu, the able author of the Introduction to the Voyage of the Sutil and Mexicana, published by the authority of the king of Spain, and the learned and laborious Alexander von Humboldt. On the opposite side stands Hakluyt, and Hakluyt alone; for Camden and Purchas both followed Hakluyt implicitly, and though they may be considered to approve, they do not in any way confirm his account; while Hakluyt himself has nowhere disclosed his sources of information, and by the variation of the two editions of his work in the two most important facts of the whole voyage, namely, the extreme limits southward and northward respectively of Drake's expedition, he

has indirectly made evident the doubtful character of the information on which he relied, and has himself abandoned the version of the story, which Camden, and the author of the Vie de Drach, have adopted upon his authority.

CHAPTER III.

ON THE DISCOVERY OF THE NORTH-WEST COAST OF AMERICA.

The Voyage of Francisco de Gualle, or Gali, in 1584. — Of Viscaino, in 1598. — River of Martin d'Aguilar. — Cessation of Spanish Enterprises. — Jesuit Missions in California in the 18th Century. — Voyage of Behring and Tchiricoff in 1741. — Presidios in Upper California. — Voyage of Juan Perez in 1774. — of Heceta and De la Bodega in 1775. — Heceta's Inlet. — Port Bucareli. — Bay of Bodega. — Hearne's Journey to the Coppermine River. — Captain James Cook in 1776. — Russian Establishments, in 1783, as far as Prince William's Sound; in 1787, as far as Mount Elias. — Expeditions from Macao, under the Portuguese flag, in 1785 and 1786; under that of the British East India Company in 1786. — Voyage of La Perouse in 1786. — King George's Sound Company. — Portland and Dixon, in 1786. — Meares and Tipping, in 1786, under Flag of East India Company. — Duncan and Colnett in 1787. — Captain Barclay discovers in 1787 the Straits in 48° 30′, to which Meares gives the name of Juan de Fuca in 1788. — Prince of Wales's Archipelago. — Gray and Kendrick.

THE Spaniards had long coveted a position in the East Indies, but the Bull of Pope Alexander VI. precluded them from sailing eastward round the Cape of Good Hope; they had in consequence made many attempts to find their way thither across the Pacific. It was not, however, till 1564, that they succeeded in establishing themselves in the Philippine Islands. Thenceforth Spanish galleons sailed annually from Acapulco to Manilla, and back by Macao. The trade winds wafted them

directly across from New Spain in about three months: on their return they occupied about double that time, and generally reached up into a northerly latitude, in order to avail themselves of the prevailing north-westers, which carried them to the shores of California.

An expedition of this kind is the next historical record of voyages on this coast, after Drake's visit. Hakluyt has published the navigator's own account of it in his edition of 1600, as the "True and perfect Description of a Voyage performed and done by Francisco de Gualle, a Spanish Captain and Pilot, &c., in the Year of our Lord 1584." It purports to have been translated out of the original Spanish, verbatim, into Low Dutch, by J. H. van Lindschoten; and thence into English by Hakluyt. According to this version of it, Gualle, on his return from Macao, made the coast of New Spain "under seven-and-thirty degrees and a half." The author of the "Introduction to the Journal of Galiano and Valdés" has substituted 57½ for 37½ degrees in Gualle's, or rather Gali's, account, without stating any reason for it. Mr. Greenhow, indeed, refers to a note of that author's, as intimating that he relied upon the evidence of papers found in the Archives of the Indies, but on examining the note in p. xlvi., it evidently refers to two letters from the Archbishop of Mexico, then Viceroy of New Spain, to the King, in reference to an expedition which he proposed to intrust to Jayme Juan, for the discovery of the Straits of Anian. It is true that the archbishop is stated to have consulted Gali upon his project, but the author of the "Introduction" spe-

Francisco de Gualle.

cially alludes to Lindschoten, as the person to whom the account of Gali's Voyage in 1582 was due, and refers to a French translation of Lindschoten's work, under the title of "Le Grand Routier de Mer," published at Amsterdam in 1638. But Lindschoten's original work was written in the Dutch language, being intitled "Reys-ges-chrift van de Navigatien der Portugaloysers in Orienten," and was published towards the end of the sixteenth century; and two English translations of Gali's Voyage immediately appeared, one in Wolf's edition of Lindschoten, in 1598; the other in the third volume of Hakluyt, 1598–1600. Lindschoten's own Dutch version was subsequently inserted in Witsen's "Nord en Oost Tarterye," in 1692. All these latter accounts, including the original, agree in stating seven-and-thirty degrees and a half as the latitude where Gali discovered "a very high and fair land, with many trees, and wholly without snow." The passage in the original Dutch may be referred to in Burney's History of Voyages, vol. v. p. 164. The French translation, however, which the author of the Introduction consulted, gives 57½°, the number being expressed in figures; but as this seems to be the only authority for the change, it can hardly justify it. "A high land," observes Captain Burney, "ornamented with trees, and entirely without snow, is not inapplicable to the latitude of 37½°, but would not be credible if said of the American coast in 57½° N., though nothing were known of the extraordinary high mountains which are on the western side of America in that parallel. It may be observed, that the

French translator has likewise mis-stated the course which Gali held in reaching across from Japan to the American coast, by rendering "east and east-by-north" in the original, as "east and north-east" in the French version, making a difference of three points in the compass, which would take him much farther north than his true course.

M. Eyriés, in the article "Gali," in the Biographie Universelle, puts forward the same view of the cause of the variation of the latitude in the account adopted by the author of the Introduction, namely, that it was derived from the French translation which he consulted. The words in the French version of the Grand Routier de Mer are; "Estans venus suivant ce mesme cours près de la coste de la Nouvelle Espagne à la hauteur de 57 degrez et dêmi, nous approchasmes d'un haut et fort beau pays, orné de nombre d'arbres et entièrement sans neige." M. Eyriés, however, has fallen into a curious mistake, as he represents Gali to have made the identical voyage which is the subject of the narrative, in company with Jayme Juan, in execution of the project of the Viceroy of Mexico, which was never accomplished, instead of his having made the account of the voyage for him. That M. Eyriés is in error will be evident, not merely from the account of the author of the Introduction, if more carefully examined, as well as from the title and conclusion of the Voyage of Gali itself, as given in Hakluyt's translation of the Dutch version of Lindschoten; but also from this circumstance, which seems to be conclusive. M. de Contreras, Archbishop of Mexico, was Viceroy of New Spain for the

short space of one year only, and the letters which he wrote to the King of Spain, submitting his project of an expedition to explore the north-west coast of America for his Majesty's approval, bore date the 22d January and 8th March, 1585. But Gali commenced his voyage from Acapulco in March 1582, and had returned by the year 1584, most probably before the Archbishop had entered upon his office of Viceroy, certainly before he submitted his plans to the King, which he had matured after consultation with Gali. It is difficult to account for M. Eyriés' mistake, unless it originated in an imperfent acquaintance with the Spanish language, as the statement by the author of the Introduction is by no means obscure. Gali's voyage was thus a private mercantile enterprise, and not an expedition authorised and directed by the Government of New Spain, which the account of M. Eyriés might lead his reader to suppose. It has acquired, accidentally, rather more importance of late than it substantially deserves, from the circumstance of its having been cited in support of the Spanish title to the north-west coast of America; it has consequently been thought to merit a fuller examination on the present occasion, as to its true limits northward, which clearly fall short of those attained by the Spaniards under Ferrelo, and very far short of those reached by the British under Drake.

Sebastian Viscaino.

The next authentic expeditions on these coasts were those conducted by Sebastian Viscaino. The growing rumours of the discovery of the passage between the Atlantic and Pacific by the Straits of Anian, and the necessity of providing accurate

charts for the vessels engaged in the trade between New Spain and the Philippine islands, induced Philip II. to direct an expedition to be dispatched from Acapulco in 1596, to survey the coasts. Nothing however of importance was accomplished on this occasion, but on the succession of Philip III. in 1598, fresh orders were despatched to carry into execution the intentions of his predecessor. Thirty-two charts, according to Humboldt, prepared by Henri Martinez, a celebrated engineer, prove that Viscaino surveyed these coasts with unprecedented care and intelligence. "The sickness, however, of his crew, the want of provisions, and the extreme severity of the season, prevented his advancing further north than a headland in the 42d parallel, to which he gave the name of Cape Sebastian." The smallest of his three vessels, however, conducted by Martin d'Aguilar and Antonio Florez, doubled Cape Mendocino, and reached the 43d parallel, where they found the mouth of a river which Cabrillo has been supposed by some to have previously discovered in 1543, and which was for some time considered to be the western extremity of the long-sought Straits of Anian. The subsequent report of the captain of a Manilla ship, in 1620, according to Mr. Greenhow, led the world to adopt a different view, and to suppose that it was the mouth of a passage into the northern extremity of the Gulf of California; and accordingly, in maps of the later half of the seventeenth century, California was represented to be an island, of which Cape Blanco was the northernmost headland. After this error had been corrected by the researches of the Jesuit Kuhn, in

Martin d'Aguilar.

1709, we find in the maps of the eighteenth century, such as that of Guillaume de Lisle, published in Paris in 1722, California a peninsula, Cape Blanco a headland in 45°, and near it marked "Entrée découverte par d'Aguilar."

With Gali and Viscaino terminates the brilliant period of Spanish discoveries along the north-west coast of America. The governors of New Spain during the remainder of the seventeenth century and the greater part of the eighteenth, confined their attention to securing the shores of the peninsula of California against the armed vessels of hostile Powers, which, after the discovery of the passage round Cape Horn in 1616, by the Dutch navigators Lemaire and Van Schouten, carried on their depredations in the Pacific with increasing frequency. The country itself of California was in 1697 subjected, by a royal warrant, to an experimental process of civilisation at the hands of the Jesuits, which their success in Paraguay emboldened them to undertake. In about sixty years a chain of missions was established along the whole eastern side of California, and the followers of Loyola may be considered to have ruled the country, till the decree issued by Charles III. in 1767, for the immediate banishment of the society from the Spanish dominions, led to their expulsion from the New World. During this long period, the only expedition of discovery that ventured into these seas was that which Behring and Tchiricoff led forth in 1741 from the shores of Kamtchatka, under the Russian flag. Behring's own voyage southward is not supposed to have extended beyond the 60th parallel of north latitude, where

Jesuit missions.

Behring & Tchiricoff.

he discovered a stupendous mountain, visible at the distance of more than eighty miles, to which he gave the name of Mount St. Elias, which it still bears. The account is derived from the journal of Steller, the naturalist of Behring's ship, which Professor Pallas first published in 1795, as Behring himself died on his voyage home, in one of the islands of the Aleutian Archipelago, between 54½ and 55½ degrees north latitude. Here his vessel had been wrecked, and the island still bears the name of the Russian navigator. Tchiricoff, on the other hand, advanced further eastward, and the Russians themselves maintain that he pushed his discoveries as far south as the 49th parallel of north latitude, (Letter from the Chevalier de Poletica, Russian Minister, to the Secretary of State at Washington, February 28. 1822, in British and Foreign State Papers, 1821–22, p. 483.); but this has been disputed. Mr. Greenhow considers, from the description of the latitude and bearings of the land discovered by him, that it must have been one of the islands of the Prince of Wales's Archipelago, in about 56°.

The discoveries of the Russians, of which vague rumours had found their way into Europe, and of which a detailed account was given to the Academy of Sciences at Paris, in 1780, by J. N. de l'Isle, the astronomer, on his return from St. Petersburg, revived the attention of Spain to the importance of securing her possessions in the New World against the encroachments of other Powers. It was determined that the vacant coasts and islands adjacent to the settled provinces of New Spain should be occupied,

so as to protect them against casual expeditions, and that the more distant shores should be explored, so as to secure to the crown of Spain a title to them, on the grounds of first discovery. With this object "the Marine Department of San Blas" was organised, and was charged with the superintendence of all operations by sea. Its activity was evinced by the establishment of eight "Presidios" along the coast in Upper California, in the interval of the ten years immediately preceding 1779. Of these San Diego, in 32° 39′ 30″, was the most southerly; San Francisco, in 38° 48′ 30″, the most northerly. During the same period, three expeditions of discovery were dispatched from San Blas. The earliest of these sailed forth in January 1774, under the command of Juan Perez, but its results were not made known before 1802, when the narrative of the expedition of the Sutil and Mexicana was published, as already stated. According to this account, Perez, having touched at San Diego and Monterey, steered out boldly into the open sea, and made the coast of America again in 53° 53′ north. In the latitude of 55° he discovered a headland, to which he gave the name of Santa Margarita, at the northern extremity of Queen Charlotte's Island. The strait which separates this island from that of the Prince of Wales, is henceforward marked in Spanish maps as the Entrada de Perez. A scanty supply of water, however, soon compelled him to steer southward, and he cast anchor in the Bay of San Lorenzo in 49° 30′, in the month of August, and for a short time engaged in trade with the natives. Spanish writers identify the bay of San Lorenzo with that to

'Presidios' in Upper California.

Juan Perez.

which Captain Cook, four years afterwards, gave the name of Nootka Sound. Perez was prevented from landing on this coast by the stormy state of the weather, and his vessel was obliged to cut her cables, and put to sea with the loss of her anchors. He is supposed, in coasting southward, to have caught sight of Mount Olympus in 47° 47′. Having determined the true latitude of C. Mendocino, he returned to San Blas, after about eight months' absence. Unfortunately for the fame of Perez, the claim now maintained for him to the discovery of Nootka Sound, was kept secret by the Spaniards till after general consent had assigned it to Captain Cook. The Spaniards have likewise advanced a claim to the discovery of the Straits of Fuca, upon the authority of Don Esteban José Martinez, the pilot of the Santiago, Perez' vessel; who, according to Mr. Greenhow, announced many years afterwards that he remembered to have observed a wide opening in the land between 48° and 49°: and they have consequently marked in their charts the headland at the entrance of the straits as Cape Martinez. No allusion, however, is made to this claim in the Introduction to the Voyage of the Sutil and Mexicana, nor in Humboldt's New Spain.

Heceta, De Ayala, and De la Bodega y Quadra.

In the following year (1775) a second expedition sailed from San Blas under the orders of Don Bruno Heceta, Don Juan de Ayala, and Don Juan de la Bodega y Quadra. The Spanish government observed their usual prudent silence as to the results of this expedition, but the journal of Antonio Maurelle, "the second pilot of the fleet," who acted as pilot in the Senora, which Bodega commanded, fell

into the hands of the Hon. Daines Barrington, who published an English translation of it in his Miscellanies, in 1781. There are four other accounts in MS. amongst the archives at Madrid. From one of these, the journal of Heceta himself, a valuable extract is given in Mr. Greenhow's Appendix. Their first discovery north of C. Mendocino, was a small port in 41° 7′, to which they gave the name of La Trinidad, and where they fixed up a cross, which Vancouver found still remaining in 1793. They then quitted the coast, and did not make the land again till they reached 48° 26′, whence they examined the shore in vain towards the south for the supposed Strait of Fuca, which was placed in Bellin's fanciful chart, constructed in 1766, between 47° and 48°. Having had seven of the Senora's men massacred by the natives in the latitude of 47° 20′, where twelve years later a portion of the crew of the Imperial Eagle were surprised and murdered, they resumed their voyage northward, though Heceta, owing to the sickness of his crew, was anxious to return. A storm soon afterwards separated the two vessels, and Heceta returned southward. On his voyage homewards he first made the land on the 10th of August, in 49° 30′, on the south-west side of the great island now known as Vancouver's Island, and passing the part which Perez had visited, came upon the main land below the entrance of the Straits of Fuca. On the 17th of August, as he was sailing along the coast, between 46° 40′ and 46° 4′, according to Heceta's own report, or in 46° 9′ according to the Introduction to the Voyage of the Sutil and Mexicana, Heceta discovered a great bay, the head

of which he could no where recognise. So strong; however, were the currents and eddies of the water, that he believed it to be "the mouth of some great river, or passage to another sea." He was disposed, according to his own statement, to conceive it to be the same with the Straits of Fuca, as he was satisfied no such straits existed between 47° and 48°, where they were laid down in the charts. He did not, however, venture to cast anchor; and the force of the currents, during the night, swept him too far to leeward to allow him to examine it any further. Heceta named the northern headland of the bay, C. San Roque; and the southern headland, C. Frondoso; and to the bay itself he gave the name of the Assumption, though, in the Spanish charts, according to Humboldt, it is termed "l'Ensenada de Ezeta," Heceta's Inlet. Heceta likewise gave the name of C. Falcon to a headland in 45° 43′, known since as C. Lookout; and continuing his course to the southward along the coast, reached Monterey on August 30th.

C. San Roque.

Heceta's Inlet.

De la Bodega, in the mean time, had stretched out to 56°, when he unexpectedly made the coast, 135 leagues more to the westward than Bellin's chart had led him to expect. He soon afterwards discovered the lofty conical mountain in King George III.'s Archipelago, to which he gave the name of San Jacinto, and which Cook subsequently called Mount Edgecumb, and having reached the 58th parallel, turned back to examine that portion of the coast, where the Rio de los Reyes was placed in the story of the adventures of Admiral Fonte. Having looked for this fabulous stream in vain, they landed

and took possession of the shores of an extensive bay, in 55° 30′, in the Prince of Wales' Archipelago, which they named Port Bucareli, in honour of the Viceroy. Proceeding southward, they observed the Entrada de Perez, north of Queen Charlotte's Island; but, though coasting from 49° within a mile of the shore, according to Maurelle's account, they overlooked the entrance of Fuca's Straits. A little below 47° unfavourable winds drove them off the coast, which they made once more in 45° 27′; from which parallel they searched in vain to 42° for the river of Martin d'Aguilar. In the latitude of 38° 18′ they reached a spacious and sheltered bay, which they had imagined to be Port San Francisco; but it proved to be a distinct bay, not yet laid down in any chart, so De la Bodega bestowed his own name upon it, having noted in his journal that it was here that Sir Francis Drake careened his ship. Vancouver, however, considered the bay of Sir Francis Drake to be distinct from this bay of Bodega, as well as from that of San Francisco.

Port Bucareli.

Port de la Bodega.

Expeditions had been, in the mean time, made by direction of the Hudson's Bay Company, across the northern regions of North America, to determine, if possible, the existence of the supposed northern passage between Hudson's Bay and the Pacific Ocean. Mr. Samuel Hearne, one of the Company's agents, in 1771, in the course of one of these journeys, succeeded in tracing a river, since known as the Coppermine River, to a sea, where the flux and reflux of the tide was observed. Hearne calculated the mouth of this river to be in

Mr. Samuel Hearne.

The Coppermine Company.

about 72° north latitude; and he had assured himself, by his own observations, that no channel connecting the two seas extended across the country which he had traversed. It appears that a parliamentary grant of 20,000*l.* had been voted, in 1745, by the House of Commons, for the discovery of a north-west passage, through Hudson's Bay, by ships belonging to his Britannic Majesty's subjects; and in 1776, this reward was further extended to the ships of his Majesty, which might succeed in discovering a northern passage between the two oceans, in any direction or under any parallel north of 52°. The Lords of the British Admiralty, in pursuance of Hearne's report, determined on sending out an expedition to explore the north-easternmost coasts of the Pacific; and Captain James Cook, who had just returned from an expedition in the southern hemisphere, was ordered, in 1776, to proceed round the Cape of Good Hope to the coast of New Albion, in 45 degrees. He was besides directed to avoid all interference with the establishments of European Powers: to explore the coast northward, after reaching New Albion, up to 65°; and there to commence a search for a river or inlet which might communicate with Hudson's Bay. He was further directed to take possession, in the name of his sovereign, of any countries which he might discover to be uninhabited; and if there should be inhabitants in any parts not yet discovered by other European powers, to take possession of them, with the consent of the natives. No authentic details of any discoveries had been made public by the Spaniards

Captain James Cook.

since the expedition of Viscaino, in 1602, though rumours of certain voyages along the north-west coast of America, made by order of the viceroy of New Spain, in the two preceding years, had reached England shortly before Cook sailed; but the information was too vague to afford Cook any safe directions.

Cook's Voyage.

The expedition reached the shores of New Albion in 44° north, and thence coasted at some distance off up to 48°. Cook arrived at the same conclusion which Heceta had adopted, that between 47° and 48° north there were no Straits of Fuca, as alleged. He seems to have passed unobserved the arm of the sea a little further northward, having most probably struck across to the coast of Vancouver's Island, which trends north-westward. Having now reached the parallel of 49° 30′, he cast anchor in a spacious bay, to which he gave the name of King George's Sound; but the name of Nootka, borrowed from the natives, has since prevailed. It has been supposed, as already stated, that Nootka Sound was the bay in which Perez cast anchor, and which he named Port San Lorenzo; and that the implements of European manufacture, which Captain Cook, to his great surprise, found in the possession of one of the natives, were obtained on that occasion from the Spaniards. The first notification, however, of the existence of this important harbour, dates from this visit of Captain Cook, who continued his voyage northward up to the 59th parallel, and from that point commenced his survey of the coast, in the hope of discovering a passage into the Atlantic. It is un-

necessary to trace his course onward. Although Spanish navigators claim to have seen portions of the coast of North America between the limits of 43° and 55° prior to his visit, yet their discoveries had not been made public, and their observations had been too cursory and vague to lead to any practical result. Captain Cook is entitled, beyond dispute, to the credit of having first dispelled the popular errors respecting the extent of the continents of America and Asia, and their respective proximity; and as Drake, according to Fletcher, changed the name of the land south of Magellan's Straits from Terra incognita to Terra nunc bene cognita, so Cook was assuredly entitled to change the name of the North Pacific Sea from "Mare incognitum" to "Mare nunc bene cognitum."

On the return of the vessels engaged in this expedition to England, where they arrived in October, 1780, it was thought expedient by the Board of Admiralty to delay the publication of an authorised account, as Great Britain was engaged in hostilities with the United States in America, and with France and Spain in the Old World. The Russians in the mean time hastened to avail themselves of the information which they had obtained when Captain King, on his way homewards by China, touched at the harbour of Petropawlosk, and an association was speedily formed amongst the fur merchants of Siberia and Kamtchatka to open a trade with the shores of the American continent. An expedition was in consequence dispatched in 1783, for the double purpose of trading and exploring, and several trading posts were established between Aliaska and

Russian traders.

Prince William's Sound.

Prince William's Sound. Mr. Greenhow (p. 161.) assigns to this period the Russian establishment on the island of Kodiak, near the entrance of the bay called Cook's Bay, but the Russian authorities refer this settlement to a period as remote as 1763. (Letter from the Chevalier de Poletica to the Secretary of State at Washington, 28th February, 1822. British and Foreign State Papers, 1821-22, p. 484.) The Russian establishments seem to have extended themselves in 1787 and the following year as far as Admiralty Bay, at the foot of Mount Elias. The publication, however, of the journals of Cook's expedition, which took place in 1784-5, soon introduced a host of rival traders into these seas. Private expeditions were dispatched from Macao, under the Portuguese flag, in 1785 and 1786, and under the flag of the East India Company in 1786. In the month of June of this latter year, La Perouse, in command of a French expedition of discovery, arrived off the coast, and cast anchor in a bay near the foot of Mount Fairweather, in about 59°, which he named Port des Français. He thence skirted the coast southward past Port Bucareli, the western shores of Queen Charlotte's Island, and Nootka, and reached Monterey in September, where having stayed sixteen days, he bade adieu to the north-west coast of America. La Perouse seems first to have suspected the separation of Queen Charlotte's Island from the continent, but as no account of the results of this expedition was published before 1797, other navigators forestalled him in the description of nearly all the places which he had visited.

Admiralty Bay.

Expeditions under the Portuguese flag.

La Perouse.

In the August of 1785, in which year La Perouse

had sailed, an association in London, styled the King George's Sound Company, dispatched two vessels under the command of Captains Dixon and Portlock, to trade with the natives on the American coast, under the protection of licences from the South Sea Company, and in correspondence with the East India Company. They reached Cook's River in July 1786, where they met with Russian traders, and intended to winter in Nootka Sound, but were driven off the coast by tempestuous weather to the Sandwich Isles. Returning northward in the spring of 1787, they found Captain Meares, with his vessel the Nootka, frozen up in Prince William's Sound. Meares had left Calcutta in January 1786, whilst his intended consort, the Sea Otter, commanded by Captain Tipping, had been dispatched to Malacca, with instructions to proceed to the north-west coast of America, and there carry on a fur trade in company with the Nootka. Both these vessels sailed under the flag of the East India Company. Meares, after having with some difficulty got clear of the Russian establishment at Kodiak, reached Cook's River soon after Dixon and Portlock had quitted it, and proceeded to Prince William's Sound, where he expected to meet the Sea Otter; but Captain Tipping and his vessel were never seen by him again after leaving Calcutta, though Meares was led by the natives to suppose that his consort had sailed from Prince William's Sound a few days before his arrival. He determined, however, to pass the winter here, in preference to sailing to the Sandwich Isles, lest he should be prevented returning to the coast of America. Here indeed the severity of the cold, coupled

King George's Sound Company.

Dixon and Portlock.

Meares.

Tipping.

with scurvy, destroyed more than half of his crew, and the survivors were found in a state of extreme distress by Dixon and Portlock, on their return to the coast in the following spring.

We have now reached a period when many minute and detached discoveries took place. Prince William's Sound and Nootka appear to have been the two great stations of the fur trade, and it seems to have been customary, in most of the trading expeditions of this period, that two vessels should be dispatched in company, so as to divide the labour of visiting the trading posts along the coasts. Thus, whilst Portlock remained between Prince William's Sound and Mount St. Elias, Dixon directed his course towards Nootka, and being convinced on his voyage, from the reports of the natives, that the land between 52° and 54° was separated from the continent, as La Perouse had suspected, he did not hesitate to call it Queen Charlotte's Island, from the name of his vessel, and to give to the passage to the northward of it, which is marked on Spanish maps as the Entrada de Perez, the name of Dixon's Entrance. Before Dixon and Portlock quited these coasts, in 1787, other vessels had arrived to share in the profits of the fur trade. Amongst these the Princess Royal and the Prince of Wales had been despatched from England, by the King George's Sound Company, under command of Captains Duncan and Colnett; whilst the Imperial Eagle, under Captain Barclay, an Englishman, displayed in those seas for the first time the flag of the Austrian East India Company. To a boat's crew belonging to

Duncan and Colnett.

Barclay.

this latter vessel Captain Meares assigns the discovery of the straits in 48° 30′, to which he himself gave in the following year the name of Juan de Fuca, from the old Greek pilot, whose curious story has been preserved in Purchas' Pilgrims. (Introduction to Meares' Voyages, p. lv.) Meares had succeeded in returning to Macao with the Nootka, in October, 1787. In the next year he was once more upon the American coast, as two other vessels, named the Felice and Iphigenia, were despatched from Macao, under Meares and Captain Douglas respectively, the former being sent direct to Nootka, the latter being ordered to make for Cook's River, and thence proceeding southward to join her consort. Meares, in his Observations on a North-west Passage, states, that Captain Douglas anticipated Captain Duncan, of the Princess Royal, in being the first to sail through the channel which separates Queen Charlotte's Island from the main land, and thereby confirming the suppositions of La Perouse and Dixon. Captain Duncan, however, appears at all events to have explored this part of the coast more carefully than Douglas had done, and he first discovered the group of small islands, which he named the Prince of Wales' Archipelago. The announcement of this discovery seemed to some persons to warrant them in giving credit once more to the exploded story of Admiral Fonte's voyage, and revived the expectation of discovering the river, which the admiral is described to have ascended near 53° into a lake communicating with the Atlantic Ocean. It is almost needless to observe, that these expectations have never been realised.

Discovery of the Straits of Juan de Fuca.

Prince of Wales's Archipelago.

The names of several vessels have been omitted in this brief summary, which were engaged in the fur trade subsequently to the year 1785. Two vessels, however, require notice,—the Washington under Captain Gray, and the Columbia under Captain Kendrick, which were despatched from Boston, under the American flag, in August, 1787. Captain Gray reached Nootka Sound, on Sept. 17. 1788, and found Meares preparing to launch a small vessel called the North-west America, which he had built there. The Columbia does not appear to have joined her consort till after the departure of Meares and his companions. Meares himself set sail in the Felice for China, on Sept. 23., whilst the Iphigenia proceeded with the North-west America to the Sandwich Islands, and wintered there. In the spring of 1789, the two latter vessels returned to Nootka Sound, and found the Columbia had joined her consort the Washington, and both had wintered there. The North-west America was despatched forthwith on a trading expedition northward, whilst the Iphigenia remained at anchor in Nootka Sound.

Gray.

Kendrick.

Events were now at hand which were attended with very important consequences in determining the relations of Spain and Great Britain towards each other in respect to the trade with the natives on their coasts, and to the right of forming settlements among them. These will fitly be reserved, as introductory to the Convention of the Escurial, which will be discussed in a subsequent Chapter.

CHAPTER IV.

ON THE PRETENDED DISCOVERIES OF THE NORTH-WEST COAST.

Memoir of Lorenzo Ferrer Maldónado, in 1588. — Voyage of the Descubierta and Atrevida, in 1791. — Tale of Juan de Fuca, in 1592. — Voyages of Meares, Vancouver, and Lieutenant Wilkes. — Letter of Admiral Bartolemé Fonte or de Fuentes, in 1640. — Memoir of J. N. de l'Isle and Ph. Buache, in 1750. — California discovered to be a Peninsula in 1540; reported to be an Island in 1620; re-explored by the Jesuit Kuhn and others, in 1701–21. — Maps of the sixteenth and seventeenth Centuries. — Fonte's Letter, a jeu-d'esprit of Petiver, the Naturalist.

The general belief in the existence of a north-west passage from the Atlantic to the Pacific Ocean in the direction of Gaspar de Cortereal's reported Straits of Anian, led to the circulation of many false accounts of the discovery of the desired channel. The most celebrated fictions of this class seem to have originated with individuals who hoped to secure, through their pretended knowledge and experience, future employment, as well as immediate emolument. A memoir of this kind is reported to have been laid before the Council of the Indies at Seville, in 1609, by Lorenzo Ferrer Maldonado, who professed to have sailed in 1588 from Lisbon to the coast of Labrador, and thence into the South Sea through a channel in 60° north latitude, cor-

Lorenzo Ferrer Maldonado.

responding to the Strait of Anian, according to ancient tradition. He petitioned, in consequence, that he might be rewarded for his services, and be entrusted with an expedition to occupy the Strait of Anian, and defend the passage against other nations. His cotemporaries, according to the author of the Introduction to the Voyage of the Sutil and Mexicana, were men of more judgment and intelligence than some of the writers of the 18th century. The former at once discovered, by personal examination of the author, the fictitious character of his narrative, and rejected his proposal. Two copies of this memoir are supposed to exist; one of these being preserved in the library of the Duke of Infantado at Madrid, the other in the Ambrosian Library at Milan. The former of these is considered by the author of the Introduction to be certainly a cotemporaneous, and perhaps the original copy of the memoir: the Ambrosian manuscript, on the other hand, has been pronounced, in an article in the London Quarterly Review for October, 1816, to be "the clumsy and audacious forgery of some ignorant German," from the circumstance of fifteen leagues to the degree being used in some of the computations. To the same purpose Capt. James Burney, in the fifth volume of his Voyages, published in 1817, observes, that "it must not be omitted that the reckoning in the narrative is in German leagues. It is said, 'from the latitude of 64° you will have to sail 120 leagues to the latitude of 72°, which corresponds with the German league of 15 to a degree, and not with the Spanish league of 17½ to a degree, by which last the early

Spanish navigators were accustomed to reckon. From this peculiarity in the narrative it may be conjectured, that the real author was a Fleming, who probably thought he could not better advance his spurious offspring, than by laying it at the door of a man who had projected to invent a compass without variation," as Maldonado professed to do to the Council of the Indies, according to Antonio Leo in his Bibliotheca Indica.

Allusions had been occasionally made to this work by Spanish writers in the 17th century, amongst others by De Luque, the author of the "Establecimientos Ultramarinos de las Naceones Europeas." It was not, however, till so late a period as 1790 that the attention of men of science was drawn to the Madrid manuscript by J. N. Buache, the geographer of the King of France, in a paper read before the Academy of Sciences at Paris in that year. Captain Burney states, that the manuscript had been brought to notice shortly before by M. de Mendoza, a captain in the Spanish navy, who was employed in forming a collection of voyages for the use of that service. M. Buache, who had succeeded D'Anville as Geographer Royal in 1768, followed the geographical system of Ph. Buache, his relative and predecessor, and, like him, clung fondly to questionable discoveries. He had been employed to prepare instructions for the expedition of La Perouse, and thus his attention had been especially drawn to voyages of discovery on the north-west coast of America. He declared himself in his memoir so strongly in favour of the genuineness of the manuscript, and of the good faith of

Maldonado, that the Spanish government, in order that the question might be definitively set at rest, directed its archives to be searched, and the manuscript in the library of the Duke of Infantado to be carefully examined, and at the same time gave orders that the corvettes Descubierta and Atrevida, which were fitting out at Acapulco for a voyage round the world, should explore the coasts and port which Maldonado pretended to have discovered in the South Sea. The archives, however, furnished ample evidence of the correctness of the ancient opinion that Maldonado was an impostor, and the expedition of the corvettes, which sailed in 1791, confirmed this fact beyond dispute. A memoir to that effect, founded upon their observations, was published in 1797, by Don Ciriaco Cevallos, who had accompanied the expedition, to prove the utter falsity of Maldonado's story.

Descubierta and Atrevida.

It was, however, once more revived by the discovery of the Ambrosian manuscript in 1812 by Carlo Amoretti. This is said to give a more succinct account than the Madrid document, and it has been thought by some to be an abridgment of it. The article in the Quarterly Review above alluded to was occasioned by its appearance, and to the curious will furnish ample information. The Milan account of the voyage may be referred to in the fifth volume of Burney's History of Voyages. The Madrid document will be found in Barrow's Chronological History of Voyages in the Arctic Regions.

A much more plausible narrative was published in 1625, in the third volume of "The Pilgrims," by Purchas, the successor of Hackluyt as the historian

of maritime enterprises. It is entitled "A Note made by me, Michael Lok the elder, touching the Strait of Sea, commonly called Fretum Anian, in the South Sea, through the North-west Passage of Meta Incognita." The writer purported to give an account of what had been communicated to him at Venice, in April, 1596, by an ancient Greek pilot, commonly called Juan de Fuca, but properly named Apostolos Valerianus, who represented himself to have been taken in a Spanish ship by Captain Candish, and to have thereby lost 60,000 ducats, and to have been at another time sent by the Viceroy of Mexico to discover and fortify the Straits of Anian. His tale was to this effect: "That shortly afterwards, having been sent again, in 1592, by the Viceroy of Mexico, with a small caravel and pinnace, armed with mariners only, he followed the coast of North America until he came to the latitude of 47°, and there finding that the land trended east and north-east, with a broad inlet of sea between 47 and 48 degrees of latitude, he entered thereinto, sailing therein more than twenty days, and found that land trending still sometimes north-west and north-east and north, and also east, and south-eastward, and very much broader sea than was at the said entrance, and that he passed by divers islands in that sailing. And that at the entrance of this said strait, there is *on the north-west coast* thereof a great headland or island, with an exceeding high pinnacle or spired rock, like a pillar, thereupon. Juan de Fuca.

"Also, he said, he went on land in divers places, and there he saw some people on land, clad in beasts' skins; and that the land is *very fruitful*,

and rich of gold, silver, pearls, and other things, like New Spain.

"And also he said, that he being entered thus far into the said strait, and being *come into the North Sea* already, and finding the sea wide enough everywhere, and to be about *thirty or forty leagues wide in the mouth of the straits, where he entered,* he thought that he had now well discharged his office, and that not being armed to resist the force of the savage people that might happen, he therefore set sail, and returned homewards again towards New Spain, where he arrived at Acapulco, anno 1592, hoping to be rewarded by the Viceroy for the service done in the said voyage.

"Also he said that, after coming to Mexico, he was greatly welcomed by the Viceroy, and had promises of great reward; but that having sued there for two years, and obtained nothing to his content, the Viceroy told him that he should be rewarded in Spain of the King himself very greatly, and willed him therefore to go to Spain, which voyage he did perform.

"Also he said, that when he was come into Spain, he was welcomed there at the King's court; but after long suit there also, he could not get any reward there to his content. And therefore at length he stole away out of Spain, and came into Italy, to go home again and live among his own kindred and countrymen, he being very old.

"Also he said, that he thought the cause of his ill reward had of the Spaniards, to be for that they did understand very well that the *English nation*

had now given over all their voyages for discovery of the North-west Passage, wherefore they need not fear them any more to come that way into the South Sea, and therefore they needed not his service therein any more.."

"Also he said, that *understanding the noble mind of the Queen of England*, of her wars against the Spaniards, and hoping that her majesty would *do him justice for his goods lost* by Captain Candish, he would be content to go into England, *and serve her Majesty in that voyage for the discovery perfectly of the north-west passage into the South Sea*, if she would furnish him with only one ship of forty tons burthen and a pinnace, and that he would perform it in thirty days time from one end to the other of the straits, and he wished me so to write to England."

As this asserted discovery was one upon which the Spanish commissioner, in the negotiations antecedent to the Treaty of the Floridas, relied to support the claim of the Spanish crown to the north-west coast of America, and as authors of late whose opinions are entitled to respect, such as Fleurieu and Mr. Greenhow, have inclined to admit the general truth of the account, the substantial part of it has been quoted at full length, as it appears both that Fuca's narrative, if we admit it to be genuine, does not accord, in respect to any substantial fact, with the authentic reports of subsequent voyages, and that the object of the fiction is patent on the face of the story.

The object of the Greek pilot was evidently to obtain, upon the faith of his narrative, employment

from the Queen of England; and as, from his own statement, he was aware that the spirit of discovery was for the moment languid amongst the English nation, he represented the country as "very fruitful and rich of gold, silver, pearls, and other things, like New Spain." This exaggeration of the probable profits of the undertaking would not perhaps alone disentitle the narrator to credit in respect to the other circumstances of his voyage, though his integrity in making the communication might thereby become open to question: but when we look to the asserted facts of his voyage, the truth or falsehood of which must be conclusive as to the character of the narrative itself, we find that they do not correspond in any respect with ascertained facts. The straits to which Meares gave the name of Juan de Fuca in 1788, are between the 48th and 49th parallel. Mr. Greenhow considers that the difference in the position is sufficiently slight as to be within the limits of supposable error on the part of the Greek pilot; and certainly, if this were the only difficulty, it might not be conclusive against his veracity. But the straits which he professed to have discovered were from 30 to 40 leagues wide at the mouth where he entered, and according to his story he sailed through them into the North Sea, and upon the faith of this he offered to perfect his discovery of the north-west passage into the South Sea for the Queen of England, and to perform it in thirty days time from one end to the other of the straits. Now this description is so totally at variance with the real character of any straits on the west coast of America, that the

Straits of Fuca.

happy coincidence of trifling circumstances can hardly be considered sufficient to turn the scale in its favour. Amongst the latter, the existence of a pillar has been alleged, as corresponding with De Fuca's account. Meares, for instance, on approaching the straits from the north, speaks "of a small island, situated about two miles *from the southern land*, that formed the entrance of this strait, near which we saw a very remarkable rock, that wore the form of an obelisk, and stood at some distance from the island" (p. 153.), which, in his Observations on a North-west Passage (p. lxi.), he seems to consider to be the pinnacle rock of De Fuca; but unfortunately De Fuca has placed his "island with an exceeding high pinnacle or spiral rock" *on the north-west coast*, at the entrance of the strait, instead of on the southern shore. Vancouver, on entering the straits, failed himself to recognise any rock as corresponding to the pinnacle rock which Mr. Meares had represented, but he observes that a rock within Tatooche's Island, *on the southern side* of the entrance, which is united to the main land by a ledge of rocks, over which the sea breaks violently, was noticed, and supposed to be that represented as De Fuca's pinnacle rock: "this, however, was visible only for a few minutes, from its being close to the shore of the main-land, instead of lying in the entrance of the straits, nor did it correspond with that which has been so described." On the other hand, Lieutenant Wilkes, in his Account of the United States Exploring Expedition, says, "In leaving De Fuca's Straits, I anxiously watched for De Fuca's Pillar, and soon obtained a

Meares.

Vancouver.

Lieut. Wilkes.

sketch of it;" but he does not state whether he meant the pillar which Meares observed on the southern side, and called De Fuca's Pillar, or one which, according to the Greek pilot, should have formed a prominent object on the north-western coast of the strait.

Silence of Spanish writers.

It is not unimportant to observe, that there is no Spanish writer who speaks of De Fuca or his discovery: that neither in any private archives in Spain, nor in the public archives of the Indies at Seville, is there any notice of this celebrated navigator or of his important expedition, which the author of the Introduction to the Voyage of the Sutil and Mexicana observes is the more remarkable, from the great number of other voyages and expeditions of the same period preserved in the archives, which have escaped the notice of cotemporary writers; and, what is perhaps still more conclusive, that Humboldt, in his account of New Spain (l. iii. ch. viii.), states, that in spite of all his researches he had not been able to find thoughout New Spain a single document in which the name of the pilot De Fuca occurs.

Bartolemé Fonte.

The whole of these latter observations apply with equal force to the voyage of Admiral Bartolemé Fonte or De Fuentes, which purposes to have been performed in 1640 ; the narrative, however, did not make its appearance till 1708, when it was published in London, in two parts, in "The Monthly Miscellany, or Memoirs of the Curious." The mode in which it was ushered into public notice would alone be sufficient to expose it to considerable suspicion, and the gross absurdities

with which it is replete would have at once exempted it from any serious criticism, had not the Spanish commissioner, in the negotiations already alluded to, and of which a full account will be given in a subsequent place, rested upon it the territorial title of Spain to the north-west coast, up to 55° of north latitude. Fonte, according to the narrative, sailed with four vessels from Callao into the North Pacific, with orders from the Viceroy of Peru to intercept certain vessels which had sailed from Boston in New England, with the object of exploring a north-west passage. On arriving at C. St. Lucas, at the south point of California, he despatched one of his vessels "to discover whether California was an island or not, (for before, it was not known whether it was an island or a peninsula.)" He thence coasted along California to 26° of north latitude, and having a steady gale from the S.S.E., in the interval between May 26. and June 14. "he reached the River los Reyes in 53° of north latitude, not having occasion to lower a topsail in sailing 866 leagues N.N.W., 410 leagues from Port Abel to C. Blanco, 456 leagues to Rio de los Reyes, having sailed about 260 leagues in crooked channels, amongst islands named the Archipelagus de St. Lazarus, where his ships' boats always sailed a mile a-head, sounding, to see what water, rocks, and sands there was." "They had two Jesuits with them, that had been on their mission at 66° of N.L., and had made curious observations." Fonte ascended the Rio de los Reyes in his ships to a large lake, which he called Lake Belle. Here, he says, he left his vessels and proceeded

down another river, passing eight falls, in all 32 feet perpendicular, into a large lake which he named De Fonte. Thence he sailed out through the Estrecho de Ronquillo into the sea, where they found a large ship where the natives had never seen one before, from a town called Boston, the master of which, Captain Shaply, told him that his owner was "a fine gentleman, and major-general of the largest colony in New England, called the Maltechusets." Having exchanged all sorts of civilities and presents with this gentleman, the admiral went back to his ships in Lake Belle, and returned by the Rio de los Reyes to the South Sea. One of his officers had in the meantime ascended another river, which he named Rio de Haro, in the Lake Velasco, in 61°, whence he sailed in Indian boats as far north as 77°. Here he ascertained that there was no communication out of the Spanish or Atlantic Sea by Davis' Straits, from one of his own seamen, who had been conducted by the natives to the head of Davis' Strait, which terminated in a fresh lake of about 30 miles in circumference, in 80° N.L. He himself in the meantime had sailed as far north as 79°, and then the land trended north, and the ice rested on the land. The result of this expedition was, that they returned home, "having found there was no passage into the South Seas by what they call the North-west Passage."

Mr. Greenhow's opinion.

Such is the substance of this rather dull story, which may be read in full in the third volume of Burney's History of Voyages in the South Sea, p. 190. Mr. Greenhow (p. 84.) observes, that "the

account is very confused and badly written, and is filled with absurdities and contradictions, which should have prevented it from receiving credit at any time since its appearance: yet, as will be shown, it was seriously examined and defended, so recently as in the middle of the last century, by scientific men of great eminence, and some faith continued to be attached to it for many years afterwards."

J. N. de Isle and Philippe Buache.

Amongst its defenders the most conspicuous were J. N. de l'Isle, the brother of William de l'Isle, and Philippe Buache, the geographer of the French king, the predecessor of J. N. Buache, who has already been mentioned as the author of a memoir in defence of Maldonado's narrative. De l'Isle presented to the Academy of Sciences, in 1750, a memoir "sur les nouvelles découvertes au nord de la mer du Sud," with a map prepared by Ph. Buache, to represent these discoveries. The communication was in other respects of great importance, as it contained the first authentic account of the discoveries lately made by Behring and Tchericoff, in 1741. It is not stated from what source De l'Isle derived the copy of Fonte's letter, which seems to have come into his possession accidentally at St. Petersburg, during the absence of the Russian expedition: it was not, however, till his return to France in 1747, that he examined it in company with Ph. Buache. They were agreeably surprised to find that it accorded with Buache's own conjectures, and that it harmonised in many respects with the discoveries of the Russians. In consequence, Buache laid down in

his new map a water communication between the Pacific Ocean and Hudson's Bay. Voltaire, relying on the authority of De l'Isle, maintained in his History of Russia, published in 1759, that the famous passage so long sought for had been at last discovered. The Academy, however, received Fonte's narrative with discreet reserve; and observed, that it required more certain proofs to substantiate it.

The author of the Introduction to the Voyage of the Sutil and Mexicana states, that the Spanish government, on the representation of the French geographers, instituted a careful search into the archives of the Indies in New Spain, as well as into the archives of Peru, and likewise into the archives at Seville, Madrid, Cadiz, and other places, but that not the slightest allusion to De Fonte could be anywhere traced. This result was made known by Robert de Vaugondy, in his reply to Buache, intitled "Observations Critiques sur les nouvelles Découvertes de l'Amiral Fuentes, 8vo. 1753;" and the author of the Noticia di California, published in Madrid, in 1757, confirmed Vaugondy's announcement.

It is unnecessary to observe, that the experience of subsequent navigators has failed to confirm the narrative of De Fonte. There is one passage in the narrative which seems almost of itself to be sufficient to condemn the story. The admiral is made to state, "that he despatched one of his vessels to discover whether California was an island or not; for before it was not known whether California was an island or a peninsula." Now the Californian

California an island or a peninsula.

Gulf had been completely explored by Francisco de Ulloa, in 1539, who ascertained the fact of the junction of the peninsula to the main land, near the 32d degree of latitude; and again by Fernando de Alarcon, in 1540, who ascended a great river at the head of the Gulf of California, supposed to be the Colorado. A series of excellent charts were drawn up by Domingo del Castillo, Alarcon's pilot, a fac-simile of which Mr. Greenhow (p. 61.) states may be found in the edition of the letters of Cortez, published at Mexico in 1770, by Archbishop Lorenzana. The shores of the gulf, and of the west side of California, to the 30th degree of latitude, were there delineated with a surprising approach to accuracy. It is not a reasonable supposition that the Admiral of New Spain and Peru, who must have had ready access to the archives of the Indies at Mexico, should have expressed himself in a manner which argued a total ignorance of the previous discoveries of his countrymen; but it was very probable that a contributor to the Monthly Miscellany should stumble upon this ground, from a notion having been revived in Europe, about the middle of the 17th century, that California was an island.

Humboldt, in his Essai Politique sur la Nouvelle Espagne, l. iii. c. viii., states, that when the Jesuits Kühn, Salvatierra, and Ugarte, explored, in detail, during the years 1701–21, the coasts of the Gulf of California, it was thought in Europe to have been for the first time discovered that California was a peninsula. But, in his Introduction géographique, he observes, that in the sixteenth century no per- The Gulf of California.

son in Mexico denied this fact; nor was it till the seventeenth century that the idea originated that California was an island. During the seventeenth century, the Dutch freebooters were amongst the most active and inveterate enemies of Spain in the New World; and having established themselves in the bay of Pichilingue, on the east coast of California, from which circumstance they received the name of "Pichilingues," they caused great embarrassment to the Spanish viceroys from their proximity to the coasts of Mexico. To these adventurers the origin of the notion, that California was separated from the main land, has been referred by some authors; but Mr. Greenhow (p. 94.) states, that it was to be traced to the captain of a Manilla ship, in 1620, who reported that the asserted river of D'Aguilar was the western mouth of a channel which separated the northern extremity of California from the main land. A survey of the lower part of the peninsula was executed by the Governor of Cinaloa, and the Jesuit Jacinto Cortes, in pursuance of the orders of the Duke of Escalona, who was Viceroy during 1640–42, about the very time when Fonte purported to have sailed. They did not, however, go to the head of the gulf; and Humboldt informs us, that, during the feeble reign of Charles II. of Spain, 1655–1700, several writers had begun to regard California as a cluster of large islands, under the name of "Islas Carolinas." Thus we find in the maps of this period, in those for example of Sanson, Paris, 1650; of Du Val, geographer to the King of France, Abbeville, 1655; of Jenner, London, 1666; of De Wit,

Islas Carolinas.

Amsterdam; of Vischer, Schenkius, Herman, Moll, and others, which are in the King's Library at the British Museum, California is depicted as an island; and in Jenner's Map, in which C. Blanco is the northernmost headland of California, there is this note:—"This California was in times past thought to have been a part of the continent, and so made in all maps; but, by further discoveries, was found to be an island, long 1700 leagues."

Maps of the sixteenth and the seventeenth centuries.

On the other hand, the maps of the later part of the sixteenth, and the earlier part of the seventeenth centuries, such as those by Ortelius, the King of Spain's geographer, published in his Theatrum Orbis Terrarum, first edited in 1570, the two maps adopted by Hakluyt in the respective editions of his voyages, in 1589 and 1600, that of Le Clerc, 1602, of Hondius, which Purchas adopted in his Pilgrims, in 1625, of Speed, 1646, and that of Blaew in his Novus Atlas of 1648, agree in representing California as a peninsula. The single passage, therefore, in De Fonte's account, in which he, being "then admiral of New Spain and Peru, and now prince (or rather president) of Chili, explicitly states that he despatched one of his vessels, under the command of Don Diego Pennelosa, the nephew of Don Luis de Haro," then great minister of Spain, "to discover whether California was an island or not, for before it was not known whether it was an island or a peninsula," seems to point at once to the European origin of the tale. Mr. Dalrymple, the well-known secretary of the British Admiralty at the time of the Nootka Sound controversy, who was distinguished as the author of many able works

Petiver, the naturalist.

on maritime discoveries, considered the story to have been a jeu d'esprit of Mr. James Petiver the naturalist, one of the contributors to the Monthly Miscellany, whose taste for such subjects was evinced by his collection of MS. extracts, since preserved in the British Museum, and whose talent for such a kind of composition was shown by his Account of a Voyage to the Levant, published in the same Miscellany. It is worthy of remark, that the tale of De Fuca and the letter of De Fonte, as they have derived their origin, so they have derived their support, from writers foreign to the nation in whose favour they set up their asserted discoveries, and from them alone. Maldonado, it is true, was a Spaniard, but he likewise has found defenders only amongst strangers, whilst in his own country his narrative has been condemned as an imposture by posterity equally as by his cotemporaries.

CHAPTER V.

THE CONVENTION OF THE ESCURIAL.

The King George's Sound Company, in 1785.—Dixon and Portlock.—The Nootka and Sea Otter.—The Captain Cook and Experiment.—Expedition of Captain Hanna under the Portuguese Flag.—The Felice and Iphigenia.—The Princesa and San Carlos, in 1788.—Martinez and Haro directed to occupy Nootka in 1789.—The Princess Royal arrives at Nootka.—Colnett arrives in the Argonaut, July 2. 1789, with instructions to found a Factory.—He is seized, with his Vessel, by Martinez.—The Princess Royal also seized.—Both Vessels sent as Prizes to San Blas.—The Columbia and Washington allowed to depart.—Representation of the Spanish Government to the Court of London.—British Reply.—Memorial of Captain Meares.—Message of the British Crown to Parliament.—British Note of May 5. 1790, to the Spanish Minister in London.—British Memorial of May 16.—Memorial of the Court of Spain, July 13.—Declaration of his Catholic Majesty to all the Courts of Europe.—Treaty of Utrecht.—Declaration and Counter-declaration of July 4.—Spain demands aid from France, according to the Family Compact of 1761.—The National Assembly promotes a peaceful Adjustment of the Dispute.—Convention between Spain and Great Britain signed at the Escurial, Oct. 28. 1790.—Recognition of the Claims of Great Britain.

It has been already observed, that no British subject could trade to the west of Cape Horn without a licence from the South Sea Company, whilst, on the other hand, to the eastward of the Cape of Good Hope the East India Company possessed an exclusive monopoly of commerce. Thus the mercantile association which assumed the name of the King George's Sound Company, and which despatched two vessels under Dixon and Portlock from England in the autumn of 1785, had found it necessary to ob-

King George's Sound Company.

tain licences from the South Sea Company for them to proceed by way of Cape Horn, and they had likewise entered into an arrangement with the East India Company to carry their furs to Canton, and there exchange them for teas and other products of China, to be conveyed in their turn round the Cape of Good Hope to England. These vessels sailed under the British flag. With a similar object, two vessels, the Nootka, under Captain Meares, and the Sea Otter, under Captain Tipping, were, by an association under the patronage of the Governor General of India, early in 1786, despatched from Calcutta, under the flag of the English East India Company, whilst the Captain Cook and the Experiment sailed from Bombay for the same destination. An attempt, however, had been made by British merchants in the preceding year, to organise a trade between North-west America and China, under the protection of the Portuguese flag, so as to evade the excessive harbour dues demanded by the Chinese authorities from other European nations, by means of licences granted by the Portuguese authorities at Macao. The first expedition of this kind was made by Captain Hanna, in 1785, and was most successful as a commercial speculation. In a similar manner, in 1788, some British merchants residing in India fitted out the Felice and Iphigenia for this trade, and through the interest of Juan Cavallo, a Portuguese merchant who had resided for many years at Bombay as a naturalised British subject, and traded from that place under the protection of the East India Company, obtained from the Governor of Macao permission for them to navigate under

The Nootka and the Sea Otter.

The Felice and Iphigenia.

the Portuguese flag, if found convenient. Meares in his memorial states, that Cavallo merely lent his name to the firm, and that he had no real interest in the Iphigenia, as on his subsequent bankruptcy the claims of his creditors were successfully resisted, and the Iphigenia consequently lost the privileges which she had hitherto enjoyed in the ports of China, in her character of a Portuguese ship. On the other hand, in the obligation which Martinez exacted from the master and supercargo of the Iphigenia, Cavallo is spoken of as the lawful owner of the vessel in whose name they bound themselves. It is possible however that they may have bound the ostensible owner on purpose to defeat the object of the Spanish commander, instead of the real owners; and assuredly the instructions of the Merchant Proprietors to Captain Meares, "commanding the Felice and Iphigenia," seem to be at variance with the fact of Cavallo being the real owner, as they are addressed to him evidently not in the mere character of supercargo, but as having the complete control of the vessels, which are expressly stated to have been fitted out and equipped by the Merchant Proprietors: and Meares is directed to defend his vessel against all attempts of Russian, English, or Spanish vessels to seize it; to protest, if captured, against the seizure of his vessel and cargo; and to take possession of any vessel that attacked him, as also her cargo, in case he should have the superiority in the conflict. (Appendix to Meares' Voyage.)

To the same effect, the orders of Captain Meares to Captain Douglass, of the Iphigenia, seem to be conclusive that the latter had full control over

the vessel. "Should you," it is observed, "in the course of your voyage, meet with the vessels of any other nation, you will have as little communication with them as possible. If they be of superior force, and desire to see your papers, you will show them. You will, however, be on your guard against surprise. Should they be either Russian, English, Spanish, or any other civilised nation, and are authorised to examine your papers, you will permit them, and treat them with civility and friendship. but at the same time you must be on your guard. Should they attempt to seize you, or even carry you out of your way, you will prevent it by every means in your power, and repel force by force."

Captain Douglass, moreover, was directed to note down the good behaviour of his officers and crew, and thus afford his employers a medium to distinguish merit from worthlessness. "This log-book," they go on to state, "is to be signed by yourself. On your return to China you will seal up your log-book, charts, plans, &c. &c., and forward them to Daniel Beale, Esq., of Canton, who is the ostensible agent for the concern; and you have the most particular injunctions not to communicate or give copies of any charts or plans that you may make, as your employers assert a right to all of them, and as such will claim them."

The person to whom such instructions were addressed must evidently have had the control of the vessel, and not been merely in charge of the cargo. It has been, however, rightly observed by Mr. Greenhow, that the papers on board the Iphigenia, when seized by Martinez, were written in the Por-

tuguese language, which Captain Douglass did not understand, and therefore could not well act upon. The reply to this seems to be, that Douglass himself acted upon the letter of Captain Meares, inserted in the Appendix to Meares' Voyages, which embodied in English the substance of the general instructions drawn up for the expedition in Portuguese; and that the ship's papers were in the Portuguese language to support her assumed Portuguese character. There is no doubt that there was some deception in the transaction, but the deception seems to have been directed rather against the Chinese than the Spaniards.

Whatever may have been the character which was sought to be given to the Felice and Iphigenia, Meares appears on landing at Nootka to have avowed his British character, by hoisting British colours upon the house which he built on ground granted to him by Maquilla, the chief of the neighbouring district, as well as by displaying the English ensign on the vessel which he constructed and launched at Nootka. It was his intention to employ this vessel, a sloop of about forty tons, exclusively on the coast of America, in exploring new trading stations, and in collecting furs to be conveyed by the other vessels to the Chinese markets. It was named the North-west America, and was manned by a crew of seven British subjects and three natives of China.

Meares, having left the Iphigenia and North-west America to carry on the trade on the American coast, returned with a cargo of furs to Macao, in December 1788, and having there sold the Felice, associated himself with some merchants of Lon-

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don, who had embarked in this commerce under licences from the East India and South Sea Companies. Two of their vessels, under Dixon and Portlock, which have already been alluded to, the Prince of Wales and Princess Royal, had just arrived at Canton from the north-west coast of America. Meares, apprehending that mutual loss would result from competition, entered into a formal agreement with Mr. John Etches, the supercargo of the two ships, making a joint stock of all the vessels and property employed in that trade. The new firm immediately purchased an additional ship, named the Argonaut, and the Prince of Wales being chartered with a cargo of tea to England by the East India Company, the Princess Royal and the Argonaut were ordered to sail to Nootka Sound under the command of Captain Colnett and Captain Hudson. It is indisputable that these vessels were sailing under the British flag, and from the instructions delivered to Captain Colnett, the Iphigenia and North-west America were henceforward to be under his orders, and to trade on account of the Company. He was accordingly directed to send home Captain Douglass in the Argonaut, and to receive from him the Iphigenia and North-west America, shifting their crews, &c.

The Princess Royal and the Argonaut.

"We also authorise you," the instructions go on to state, "to dismiss from your service all persons who shall refuse to obey your orders, when they are for our benefit, and in this case we give you to understand, the Princess Royal, America, and other small craft, are always to continue on the coast of America. Their officers and people, when the time

of their service is up, must be embarked in the returning ship to China, and on no account whatever will we suffer a deviation from these orders."

Thenceforward, it appears, that the Iphigenia and North-west America would be considered as sailing under the same character as the other vessels of this Company.

The steady advance of the Russian establishments along the north-west shores of the Pacific, which had become notorious from the publication of Captain Cook's journals, could not but cause great anxiety to the Spanish government. An expedition of inquiry was in consequence sent northward from the port of San Blas in 1788, consisting of two vessels, the Princesa and San Carlos, under the command of Esteban José Martinez and Gonzalo López de Haro. They were instructed to proceed directly to Prince William's Sound, and to visit the various factories of the Russians in that neighbourhood. Having executed their commission, they returned to San Blas in the autumn of the same year, and reported the results of their voyage to the Viceroy of Mexico. Martinez brought back the information that it was the intention of the Russians to found a settlement at Nootka. The Court of Madrid in consequence addressed a remonstrance to the Emperor of Russia against the encroachments upon the territories of his Catholic Majesty, which were assumed to extend northward up to Prince William's Sound, and the Viceroy of Mexico in the mean time took measures to prevent the execution of any such schemes. With this object he despatched Martinez and Haro in 1789, with instructions to occupy the

The Princesa and San Carlos.

Martinez and Haro.

port of Nootka by right of the prior discovery of Perez in 1774, to treat any Russian or English vessels that might be there with the courtesy which the amicable relations between the several nations required, but to manifest to them the paramount rights of Spain to make establishments there, and by inference to prevent all foreign establishments which might be prejudicial to Spanish interests.

The Princesa sailed into Nootka Sound on the 6th of May 1789, and found the Iphigenia at Friendly Cove. The San Carlos joined her consort on the 13th. The Columbia merchantman, of the United States of America, was lying at anchor at no great distance. Mutual civilities passed between the different vessels till the 15th, when Martinez took possession of the Iphigenia, and transferred her captain and crew as prisoners to his own vessels. He subsequently allowed the Iphigenia to depart, upon an obligation being signed by the captain and supercargo on behalf of Juan Cavallo of Macao, as the owner, to satisfy all demands, in case the Viceroy of Spain should pronounce her to be a prize, on account of navigating or anchoring in seas or ports belonging to the dominion of his Catholic Majesty without his permission. Captain Kendrick of the Columbia, and Ingraham his first pilot, were called in to witness this agreement. The Iphigenia was released on the 1st of June, and sailed away directly to Queen Charlotte's Island. On the 8th, the North-west America arrived from a trading voyage along the southern coasts, and was immediately taken possession of by Martinez. A few days afterwards the Princess

Royal arrived from Macao, bringing intelligence of the failure of the house of Cavallo, in consequence of which Martinez hoisted Spanish colours on board of the North-west America, and employed her to trade along the coast upon his own account.

The Princess Royal was not however molested by him, but, on the 2d of July, her consort the Argonaut arrived with Captain Colnett, who, upon hearing of the treatment of the Iphigenia and the North-west America, hesitated at first to enter the Sound. His instructions were to found a factory, to be called Fort Pitt, in the most convenient station which he might select, for the purpose of a permanent settlement, and as a centre of trade, round which other stations might be established. Having at last entered the Sound, he was invited to go on board the Princesa, where an altercation ensued between Martinez and himself, in respect of his object in visiting Nootka, the result of which was the arrest of Colnett himself and the seizure of the Argonaut. Her consort the Princess Royal on her return to Nootka on the 13th of July, was seized in like manner by the Spanish commander. Both these vessels were sent as prizes to San Blas, according to Captain Meares' memorial. The Columbia in the mean while had been allowed to depart unmolested, and her consort the Washington, which had been trading along the coast, soon followed her.

The Columbia and the Washington.

Such is a brief summary of the transactions at Nootka Sound in the course of 1789, which led to the important political discussions, that terminated in the convention of the 28th of Oct. 1790, signed

at the Escurial. By this convention the future relations of Spain and Great Britain in respect of trade and settlements on the north-west coast of America, were amicably arranged.

Spanish remonstrance.

Immediately upon receiving information of these transactions from the viceroy, the Spanish Government hastened to communicate to the Court of London the seizure of a British vessel (the Argonaut), and to remonstrate against the attempts of British subjects to make settlements in territories long occupied and frequented by the Spaniards, and against their encroachments on the exclusive rights of Spain to the fisheries in the South Seas, as guaranteed by Great Britain at the treaty of Utrecht. The British Ministry in reply demanded the immediate restoration of the vessel seized, as preliminary to any discussion as to the claims of Spain. The Spanish Cabinet in answer to this demand stated, that as the Viceroy of Mexico had released the vessel, his Catholic Majesty considered that affair as concluded, without discussing the undoubted rights of Spain to the exclusive sovereignty, navigation, and commerce in the territories, coasts, and seas, in that part of the world, and that he should be satisfied with Great Britain directing her subjects to respect those rights in future. At this juncture, Meares, who had received from the Columbia, on her arrival at Macao, the tidings of the seizure of the North-west America, whose crew returned as passengers in the Columbia, as well as of the Argonaut and the Princess Royal, arrived at London with the necessary documents to lay before the British Government. A full memorial of

British reply.

Meares' memorial.

the transactions at Nootka Sound in 1789, including an account of the earlier commercial voyages of the Nootka and the Felice, was presented to the House of Commons on May 13. 1790. It is published in full in the appendix to Meares' Voyages, and the substance of it may be found amongst the state papers in the Annual Register for 1790. This was followed by a message from his Majesty to both Houses of Parliament on May 25th, stating that "two vessels belonging to his Majesty's subjects, and navigated under the British flag, and two others, of which the description had not been hitherto sufficiently ascertained, had been captured at Nootka Sound by an officer commanding two Spanish ships of war." Having alluded to the substance of the communications which had passed between the two Governments, and to the British minister having been directed to make a fresh representation, and to claim full and adequate satisfaction, the message concluded with recommending that "such measures should be adopted as would enable his Majesty to support the honour of his crown and the interests of his people." The House of Commons gave their full assent to these recommendations, and readily voted the necessary supplies, so that preparations to maintain the rights of Great Britain by arms were immediately commenced. In the meantime a note had been addressed on May 5th, to the Spanish minister in London, to the effect that his Majesty the King of England would take effectual measures to prevent his subjects from acting against the just and acknowledged rights of Spain, but that he could

Message to Parliament.

British Note of May 5.

not accede to her pretensions of absolute sovereignty, commerce, and navigation, and that he should consider it his duty to protect his subjects in the enjoyments of the right of fishery in the Pacific Ocean. In accordance with the foregoing answers, the British chargé-d'affaires at Madrid made a demand, on May 16th, for the restitution of the Princess Royal, and for reparation proportionate to the losses and injuries sustained by English subjects trading under the British flag. He further asserted for them "an indisputable right to the enjoyment of a free and uninterrupted navigation, commerce, and fishery, and to the possession of such establishments as they should form with the consent of the natives of the country, not previously occupied by any of the European nations." The substance of these communications was embodied in the memorial of the Court of Spain, delivered on June 13th to the British ambassador at Madrid. It appeared, however, from a subsequent reply from the Spanish minister, the Conde de Florida Blanca, that Spain maintained, "that the detention of the vessels was made in a port, upon a coast, or in a bay of Spanish America, the commerce or navigation of which belonged exclusively to Spain by treaties with all nations, even England herself." The nature of these exclusive claims of Spain had been already notified to all the courts of Europe, in a declaration made by his Catholic Majesty on June 4th, where the words are made use of, "in the name of the King, his sovereignty, navigation, and exclusive commerce to the continent and islands of the South Sea, it is the man-

British demand of May 16.

Memorial of the Court of Spain.

The declaration by his Catholic Majesty.

ner in which Spain, in speaking of the Indies, has always used these words: that is to say, to the continent, islands, and seas, which belong to his Majesty, so far as discoveries have been made, and secured to him by treaties and immemorial possession, and uniformly acquiesced in, notwithstanding some infringements by individuals, who have been punished upon knowledge of their offences. And the King sets up no pretensions to any possessions, the right to which he cannot prove by irrefragable titles."

What were the treaties and immemorial possession upon which Spain rested her claims, was more explicitly stated in the Spanish Memorial of the 13th June. The chief reliance seemed to have been placed upon the 8th article of the Treaty of Utrecht, as concluded between Great Britain and Spain in 1713, by which it was agreed, that the exercise of navigation and commerce to the Spanish West Indies should remain in the same state in which it was in the time of Charles II. of Spain; that no permission should at any time be given to any nation, under any pretext whatever, to trade into the dominions subject to the Crown of Spain in America, excepting as already specially provided for by treaties: moreover, Great Britain undertook "to aid and assist the Spaniards in re-establishing the ancient limits of their dominions in the West Indies, in the exact situation in which they had been in the time of Charles II." The extent of the Spanish territories, commerce, and dominions on the continent of America was further alleged in this memorial to have been clearly laid down and

Treaty of Utrecht.

authenticated by a variety of documents and formal acts of possession about the year 1692, in the reign of the above-mentioned monarch: all attempted usurpations since that period had been successfully resisted, and reiterated acts of taking possession by Spanish vessels, had preserved the rights of Spain to her dominions, which she had extended to the limits of the Russian establishments within Prince William's Sound. It was still further alleged, that the Viceroys of Peru and New Spain had of late directed the western coasts of America, and the islands and seas adjacent, to be more frequently explored, in order to check the growing increase of smuggling, and that it was in one of the usual tours of inspection of the coasts of California that the commanding officer of a Spanish ship had detained the English vessels in Nootka Sound, as having arrived there, not for the purposes of trade, but with the object of "founding a settlement and fortifying it."

From these negotiations it would appear, that Spain claimed for herself an exclusive title to the entire north-western coast of America, up to Prince William's Sound, as having been discovered by her, and such discovery having been secured to her by treaties, and repeated acts of taking possession. She consequently denied the right of any other nation (for almost all the nations of Europe had been parties to the Treaty of Utrecht) to make establishments within the limits of Spanish America. Great Britain, on the other hand, maintained her right "to a free and undisturbed navigation, commerce, and fishery, and to the possession of any

establishment which she might form with the consent of the natives of the country, where such country was not previously occupied by any of the European nations." These may be considered to have been the two questions at issue between Great Britain and Spain, which were set at rest by the subsequent convention.

That such was the object of the convention, is evident from the tenor of two documents exchanged between the two courts on the 24th of July, 1790, the first of which contained a declaration, on the part of his Catholic Majesty, of his engagement to make full restitution of all the British vessels which were captured at Nootka, and to indemnify the parties, with an understanding that it should not prejudice "the ulterior discussion of any right which his Majesty might claim to form an exclusive establishment at the port of Nootka;" whilst on the part of his Britannic Majesty a counter-declaration was issued, accepting the declaration of his Catholic Majesty, together with the performance of the engagements contained therein, as a full and entire satisfaction for the injury of which his Majesty complained; with the reservation that neither the declaration nor its acceptance "shall prejudice in any respect the right which his Majesty might claim to any establishment which his subjects might have formed, or should be desirous of forming in future, in the said Bay of Nootka." Mr. Greenhow's mode of stating the substance of these papers (p. 206.) is calculated to give an erroneous notion of the state in which they left the question. He adds, "it being, however, at the same time *admitted and*

expressed on both sides, that the Spanish declaration was not to preclude or prejudice the ulterior discussion of any right which his Catholic Majesty might claim to form an exclusive establishment at Nootka Sound." This is not a correct statement of the transaction, as the reservation was expressed in the declaration of his Catholic Majesty; but so far was his Britannic Majesty from admitting it in the counter-declaration, that he met it directly with a special reservation of the rights of his own subjects, as already set forth.

The Family Compact.

Had the crown of Spain been able to rely upon assistance from France, in accordance with the treaty of 1761, known as the Family Compact, there can be no doubt that she would have attempted to maintain by arms her claim of exclusive sovereignty over "all the coast to the north of Western America on the side of the South Sea, as far as beyond what is called Prince William's Sound, which is in the sixty-first degree;" but her formal application for assistance was not attended with the result which the mutual engagements of the two crowns would have secured at an earlier period. The National Assembly, to which body Louis XVI. was obliged, under the altered state of political circumstances in France, to submit the letter of the King of Spain, was rather disposed to avail itself of the opportunity which seemed to present itself for substituting a national treaty between the two nations for the Family Compact between the two Courts; and though it decreed that the naval armaments of France should be increased in accordance with

The National Assembly.

the increased armaments of other European powers, it made no direct promise of assistance to Spain. On the contrary, the Diplomatic Committee of the National Assembly resolved rather to strengthen the relations of France with England, and to prevent a war, if possible; and with this object they co-operated with the agent of Mr. Pitt in Paris (Tomline's Life of Pitt, c. xii.), and with M. de Montmorenci, the French Secretary for Foreign Affairs, in furthering the peaceable adjustment of the questions in dispute.

Convention of the Escurial.

Convention between His Britannic Majesty and the King of Spain, signed at the Escurial the 28th of October, 1790. (Annual Register, 1790, p. 303. Martens, Recueil de Traités, t. iv. p. 493.)

"Their Britannic and Catholic Majesties, being desirous of terminating, by a speedy and solid agreement, the differences which have lately arisen between the two crowns, have judged that the best way of attaining this salutary object would be that of an amicable arrangement, which, setting aside all retrospective discussion of the rights and pretensions of the two parties, should fix their respective situation for the future on a basis conformable to their true interests, as well as to the mutual desire with which their said Majesties are animated, of establishing with each other, in every thing and in all places, the most perfect friendship, harmony, and good correspondence. In this view, they have named and constituted for their plenipotentiaries: to wit, on the part of his Britannic Majesty,

Alleyne Fitz-Herbert, Esq., one of his said Majesty's Privy Council in Great Britain and Ireland, and his Ambassador Extraordinary and Plenipotentiary to his Catholic Majesty; and, on the part of his Catholic Majesty, Don Joseph Monino, Count of Florida Blanca, Knight Grand Cross of the Royal Spanish Order of Charles III., Councillor of State to his said Majesty, and his Principal Secretary of State, and of the Despatches: who, after having communicated to each other their respective full powers, have agreed upon the following articles:—

"ART. I. It is agreed that the buildings and *tracts of land* situated on the north-west coast of the continent of North America, or on islands adjacent to that continent, of which the subjects of his Britannic Majesty were *dispossessed*, about the month of April, 1789, by a Spanish officer, shall be restored to the said Britannic subjects.

"ART. II. And further, that a just reparation shall be made, according to the nature of the case, for all acts of violence or hostility which may have been committed, subsequent to the month of April, 1789, by the subjects of either of the contracting parties against the subjects of the other; and that, in case any of the said respective subjects shall, since the same period, have been forcibly dispossessed of their *lands*, buildings, vessels, merchandise, or other property whatever, on the said continent, or on the seas or islands adjacent, they shall be *re-established in the possession thereof*, or a just compensation shall be made to them for the losses which they shall have sustained.

"ART. III. And, in order to strengthen the bonds of friendship, and to preserve in future a perfect harmony and good understanding between the two contracting parties, it is agreed that their respective subjects shall not be disturbed or molested, either in navigating or carrying on their fisheries in the Pacific Ocean, or in the South Seas, or in landing on the coasts of those seas, *in places not already occupied*, for the purpose of carrying on their commerce with the natives of the country, *or of making settlements there*; the whole subject, nevertheless, to the restrictions and provisions specified in the three following articles.

"ART. IV. His Britannic Majesty engages to take the most effectual measures to prevent the navigation and fishery of his subjects in the Pacific Ocean, or in the South Seas, from being made a pretext for illicit trade with the Spanish *settlements*; and, with this view, it is moreover expressly stipulated, that British subjects shall not navigate, or carry on their fishery in the said seas, within the space of ten sea leagues from any part of the coasts *already occupied by Spain*.

"ART. V. It is agreed, that as well in the places which are to be restored to the British subjects, by virtue of the first article, as in all other parts of the north-western coasts of North America, or of the islands adjacent, situated to the north of the parts of the said coast already occupied by Spain, wherever the subjects of either of the two powers *shall have made settlements* since the month of April, 1789, or *shall hereafter make any*, the subjects of the other shall have free access, and

shall carry on their trade, without any disturbance or molestation.

" ART. VI. It is further agreed, with respect to the eastern and western coasts of South America, and to the islands adjacent, that no *settlement* shall be formed hereafter, by the respective subjects, in such parts of those coasts as are situated to the south of those parts of the same coasts, and of the islands adjacent, which are already occupied by Spain: provided that the said respective subjects shall retain the liberty of landing on the coasts and islands so situated, for the purposes of their fishery, and of erecting thereon huts, and other temporary buildings, serving only for those purposes.

" ART. VII. In all cases of complaint or infraction of the articles of the present convention, the officers of either party, without permitting themselves previously to commit any violence or act of force, shall be bound to make an exact report of the affair, and of its circumstances, to their respective courts, who will terminate such differences in an amicable manner.

" ART. VIII. The present convention shall be ratified and confirmed in the space of six weeks, to be computed from the day of its signature, or sooner, if it can be done.

" In witness whereof, we the undersigned Plenipotentiaries of their Britannic and Catholic Majesties, have, in their names, and in virtue of our respective full powers, signed the present convention, and set thereto the seals of our arms.

" Done at thePalace of St. Laurence, the twenty-

eighth of October, one thousand seven hundred and ninety.

" ALLEYNE FITZ-HERBERT.
(L. S.)
" El Conde DE FLORIDA BLANCA."
(L. S.)

On examining this convention, it will be seen that the first article confirmed the positive engagement which his Catholic Majesty had contracted by his declaration of the 24th July: that the second contained an engagement for both parties to make reparation mutually for any contingent acts of violence or hostility: that the third defined for the future the mutual rights of the two contracting parties, in respect to the questions which remained in dispute after the exchange of the declaration and counter-declaration. By this article the navigation and fisheries of the Pacific Ocean and the South Seas were declared to be free to the subjects of the two crowns, and their mutual right of trading with the natives on the coast, and of *making settlements in places not already occupied*, was fully recognised, subject to certain restrictions in the following articles.

1st Article.

2d Article.

3d Article.

By the fourth of these, his Britannic Majesty bound himself to prevent his subjects carrying on an illicit trade with the Spanish settlements, and engaged that they should not approach within ten miles of the coasts already occupied by Spain.

4th Article.

By the fifth it was agreed that, in the places to be restored to the British, and in whatever parts of the north-western coasts of America, or the

5th Article.

adjacent islands, situate to the north of the parts already occupied by Spain, the subjects of either power should make settlements, the subjects of the other should have free commercial access.

6th Article. By the sixth it was agreed, that no settlements should be made by either power on the eastern and western coasts of South America, or the adjacent islands, south of the parts already occupied by Spain; but that they should be open to the temporary occupation of the subjects of either power, for the purposes of their fishery.

7th Article. By the seventh, provisions were made for the amicable arrangement of any differences which might arise from infringements of the convention;

8th Article. and, by the eighth, the time of ratification was settled.

It thus appears that, by the third article, the right insisted upon by the British chargé-d'affaires at Madrid, in the Memorial of the 16th of May, was fully acknowledged; namely, "the indisputable right to the enjoyment of a free and uninterrupted navigation, commerce, and fishery, and to the possession of such establishments as they should form, with the consent of the natives of the country, not previously occupied by any of the European nations." In accordance with this view, it

Schoell's Traités de Paix. is observed in Schoell's Histoire Abrégée des Traités de Paix: "En conséquence il fut signé le 28 Octobre, au palais de l'Escurial, une convention par laquelle la question litigieuse fut entièrement décidée en faveur de la Grande Bretagne."

Thus, indeed, after a struggle of more than two hundred years, the principles which Great Britain

had asserted in the reign of Elizabeth, were at last recognised by Spain: the unlimited pretensions of the Spanish crown to exclusive dominion in the Western Indies, founded upon the bull of Alexander VI., were restrained within definite limits; and occupation, or actual possession, was acknowledged to be henceforward the only test between the two crowns, in respect to each other, of territorial title on the west coast of North America.

Mr. Greenhow's view of the Treaty.

Mr. Greenhow states, (p. 215.) that both parties were, by the convention, equally excluded from settling in the vacant coasts of South America; and from exercising that jurisdiction which is essential to political sovereignty, over any spot north of the most northern Spanish settlement in the Pacific. The former part of this statement is perfectly correct, but the latter is questionable, in the form in which it is set forth. The right of trading with the natives, or of making settlements in places not already occupied, was secured to both parties by the third article: whereas, in places where the subjects of either power should have made settlements, free access for carrying on their trade was all that was guaranteed to the subjects of the other party. This then was merely a commercial privilege, not inconsistent with that territorial sovereignty, which, by the practice of nations, would attend upon the occupation or actual possession of lands hitherto vacant. In fact, when Mr. Greenhow observes, in continuation, that "the convention determined nothing regarding the rights of either to the sovereignty of any portion of America, except so far as it may imply an abrogation, or ra-

ther suspension, of all such claims on both sides, to any of those coasts;" he negatives his previous supposition that the convention precluded the acquisition of territorial sovereignty by either party. The general law of nations would regulate this question, if the convention determined nothing: and, by that general law, "when a nation takes possession of a country to which no prior owner can lay claim, it is considered as acquiring the empire or *sovereignty* of it at the same time with the *domain*." The discussion of this question, however, as being one of law, not of fact, will be more properly deferred.

Vancouver. One object of Vancouver's mission, as already observed, was to receive from the Spanish officers such lands or buildings as were to be restored to the subjects of his Britannic Majesty, in conformity to the first article of the convention, and instructions were forwarded to him, after his departure, through Lieutenant Hergest, in the Dædalus, to that effect. The letter of Count Florida Blanca to the commandant at Nootka, which Lieutenant Hergest carried out with him, is to be found in the Introduction to Vancouver's Voyage, p. xxvii. "In conformity to the first article of the convention of 28th October 1790, between our Court and that of London, (. . . . .) you will give directions that his Britannic Majesty's officer, who shall deliver this letter, shall immediately be put into possession of the buildings, and districts or parcels of land, which were occupied by the subjects of that sovereign in April 1789, as well in the port of Nootka or of St. Lawrence, as in the other, said

to be called Port Cox, and to be situated about sixteen leagues distant from the former, to the southward; and that such parcels or districts of land of which the English subjects were dispossessed, be restored to the said officer, in case the Spaniards should not have given them up."

Vancouver, however, on his arrival, found himself unable to acquiesce in the terms proposed by Senor Quadra, the Spanish commandant, and despatched Lieutenant Mudge, by way of China, to England, for more explicit instructions. Lieutenant Broughton was subsequently directed to proceed home in 1793, with a similar object. On his arrival he was sent by the British Government to Madrid; and on his return to London, was ordered to proceed to Nootka, as captain of his Majesty's sloop Providence, with Mr. Mudge as his first lieutenant, to receive possession of the territories to be restored to the British, in case they should not have been previously given up. His own account, published in his Voyage, p. 50., is unfortunately meagre in the extreme. On 17th March 1796 he anchored in the Sound, where Maquinna and another chief brought him several letters, dated March 1795, which informed him "that Captain Vancouver sailed from Monterey the 1st December 1794, for England, and that the Spaniards had delivered up the port of Nootka, &c. to Lieutenant Pierce of the marines, agreeably to the mode of restitution settled between the two Courts. A letter from the Spanish officer, Brigadier Alava, informed him of their sailing, in March 1795, from thence."

Nootka delivered up.

It is evidently to this transaction that Schoell, in

his edition of Koch's Histoire Abrégée des Traités de Paix, t. i. ch. xxiv. refers, when he writes, — "L'exécution de la Convention du 28 Octobre 1790, éprouva, du reste, des difficultés qui la retardèrent jusqu'en 1795. Elles furent terminées le 23 Mars de cette année, sur les lieux mêmes, par la brigadier espagnol Alava, et le lieutenant anglais Poara (Pierce ?), qui écnangèrent des déclarations dans de golfe de Nootka même. Après que le fort espagnol fut rasé, les Espagnols s'embarquèrent, et le pavillon anglais y fut planté en signe de possession." M. Koch does not give his authority, but it was most probably Spanish, from the modification which the name of the British lieutenant has undergone. On the other hand, Mr. Greenhow cites a passage from Belsham's History of England, to this effect:— "It is nevertheless certain, from the most authentic information, that the Spanish flag flying at Nootka was never struck, and that the territory has been virtually relinquished by Great Britain." It ought, however, to have been stated, that this remark occurs in a note to Belsham's work, without any clew to the authentic information on which he professed to rely, and with a special reference to a work of no authority — L'Histoire de Fréderic-Guillaume II., Roi de Prusse, par le Comte de Ségur ; — in which it is stated, that the determination of the French Convention to maintain at all risk the Family Compact, intimidated Great Britain into being satisfied with the mere restitution of the vessels which had been captured with her subjects, while engaged in a contraband trade with the Spanish settlements ! It further appears from an official Spanish paper, to

which Mr. Greenhow alludes in a note (p. 257.) as existing in the library of Congress at Washington, intitled "Instruccion reservada del Reyno de Nueva España, que el Exmo Señor Virrey Conde de Revillagigedo diò à su sucesor el Exmo Señor Marques de Branciforte, en el año de 1704," that orders had been sent to the commandant at Nootka to abandon the place, agreeably to a royal *dictamen*. The negative remark, therefore, of Mr. Belsham, cannot disprove the fact of the restitution of Nootka to the British, against the positive statements of so many high authorities: it may, indeed, be conclusive of his own ignorance of the fact, and so far his integrity may remain unimpeached; but it must be at the expense of his character for accurate research and careful statement—the most valuable, as well as the most necessary qualifications of a writer of history.

M. Duflot de Mofras, in his recent work, intitled "Exploration du Territoire de l'Orégon," tom. ii. p. 145., further states, that Lieutenant Pierce passed through Mexico. "Par suite de quelques fausses interprétations du traité de 28 Oct. 1790, les Espagnols ne remirent point immédiatement Nootka aux Anglais, et ce ne fut qu'en Mars 1795, que le commandant espagnol opéra cette cession entre les mains du Lieutenant Pierce, de l'infanterie de marine anglaise, venu tout exprès de Londres par le Mexique, pour hâter l'exécution du traité de l'Escurial."

CHAPTER VI.

THE OREGON OR COLUMBIA RIVER.

The Oregon, or Great River of the West, discovered by D. Bruno Heceta, in 1775. Ensenada de Heceta.—Rio de San Roque.—Meares' Voyage in the Felice, in 1788.—Deception Bay.—Vancouver's Mission in 1791.—Vancouver vindicated against Mr. Greenhow in respect to Cape Orford.—Vancouver passes through Deception Bay.—Meets Captain Gray in the Merchant-ship Columbia.—Gray passes the Bar of the Oregon, and gives it the Name of the Columbia River.—Extract from the Log-book of the Columbia.—Vancouver defended.—The Chatham crosses the Bar, and finds the Schooner Jenny, from Bristol, inside.—The Discovery driven out to Sea.—Lieutenant Broughton ascends the River with his Boats, 110 Miles from its Mouth.—Point Vancouver.—The Cascades.—The Dalles.—The Chutes or Falls of the Columbia.—Mr. Greenhow's Criticism of Lieutenant Broughton's Nomenclature.—Lord Stowell's Definition of the Mouth of a River.—Extent of Gray's Researches.—The Discovery of the Columbia River a progressive Discovery.—Doctrine as to the Discovery of a River, set up by the United States, denied by Great Britain.

It is generally admitted that the first discovery of the locality where the Oregon or Great River of the West emptied itself into the sea, was made in 1775,

D. Bruno Heceta.

by D. Bruno Heceta, as he was coasting homewards to Monterey, having parted with his companion Bodega in about the 50th degree of north latitude. We find in consequence that in the charts published at Mexico soon after his return, the inlet, which he

Ensenada de Heceta.

named Ensenada de la Asuncion, is called Ensenada de Heceta, and the river which was supposed to

empty itself there, is marked as the Rio de San Roque. The discovery however of this river by Heceta was certainly the veriest shadow of a discovery, as will be evident from his own report, which Mr. Greenhow has annexed in the Appendix to his work. Having stated that on the 17th of August he discovered a large bay, to which he gave the name of the Bay of the Assumption, in about 46° 17′ N.. L., he proceeds to say, that having placed his ship nearly midway between the two capes which formed the extremities of the bay, he found the currents and eddies too strong for his vessel to contend with in safety. "These currents and eddies of water caused me to believe that the place is the mouth of some great river, or of some passage into another sea." In fact, Heceta did not ascertain that the water of this current was not sea-water, and as he himself says, had little difficulty in conceiving that the inlet might be the same with the passage mentioned by De Fuca, since he was satisfied no such straits as those described by De Fuca existed between 47° and 48°. Rio de San Roque.

Although however the discovery of this river was so essentially imperfect, being attended by no exploration, as to hardly warrant the admission of it into charts which professed to be well authenticated, still its existence was believed upon the evidence which Heceta's report furnished, and as subsequent examination has confirmed its existence, the Spaniards seem warranted in claiming the credit of the discovery for their countryman.

No further notice of this supposed river occurs until Meares' voyage in the Felice, in 1788. Meares, Meare's voyage in the Felice.

according to his published narrative, reached the bay of the river on July 6., and steered into it, with every expectation of finding there, according to the Spanish accounts, a good port. In this hope however he was disappointed, as breakers were observed, as he approached, extending across the bay. He in consequence gave to the northern headland the name of Cape Disappointment, and to the bay itself the title of Deception Bay. "We can now with safety assert," he writes, "that no such river as that of Saint Roc exists, as laid down in the Spanish charts." Meares had been led from these charts to expect that he should find a place of shelter for his ship at the mouth of this river, and Heceta, in his plan, upon which the Spanish charts were based, had supposed that there was a port there formed by an island: so that, as "it blew very strong in the offing, and a great westerly swell tumbled in on the land," it was not surprising that Meares should have concluded, from there being no opening in the breakers, that there was no such port, and therefore no such river.

Deception Bay.

There can be no doubt that the locality of the bay which Meares reconnoitred was the locality of the Ensenada de Heceta; and on the other hand it cannot be gainsayed, that Meares was right in concluding that there was *no such river* as that of St. Roque, as laid down in the Spanish charts, for the context of Meares' narrative explains the meaning of the word "such." Meares states beforehand, that they were in expectation that the distant land beyond the promontory would prove to be "the Cape St. Roque of the Spaniards, near which they

were said to have found a good port." The river then of St. Roque, such as it was laid down in Spanish charts, was a river "near which was a good port," and the disappointment which Meares handed down to posterity by the name which he gave to the promontory, was that *of not obtaining a place of shelter for his vessel.* Meares, it must be remembered, was not in search of the Straits of Anian. He had already in the previous month of June ascertained the existence of the Straits of Juan de Fuca, which he supposed might be one of the passages into Hudson's bay: but he was in search of some harbour or port, where the ship could remain in safety, while the boats might be employed in exploring the coast. (Voyage, p. 166.) Such a harbour indeed Deception Bay most assuredly does not supply, and though Baker's Bay within the bar of the river affords on the north side a good and secure anchorage, yet, as Lieut. Broughton subsequently ascertained, "the heavy and confused swell that rolls in over the shallow entrance, and breaks in three fathoms water, renders the place between Baker's Bay and Chinock Point a very indifferent roadstead."

Mr. Greenhow (p. 177.), in his observations on Meares' voyage, writes thus: "Yet, strange though it may appear, the commissioners appointed by the British Government in 1826, to treat with the plenipotentiary of the United States at London, on the subject of the claims of the respective parties to territories on the north-west side of America, insisted that Meares on this occasion discovered the Great River Columbia, which actually

enters the Pacific at Deception Bay, and cite, in proof of their assertion, the very parts of the narrative above extracted," the substance of which has just been referred to. Mr. Greenhow, however, has attached rather too great an extent to the statement of the British commissioners, which is annexed to the protocol of the sixth conference, held at London, Dec. 16. 1826. The documents relative to this negotiation have not as yet been published by the British Government, but they were made known to the Congress of the United States, with the message of President Adams, on Dec. 12. 1827, and Mr. Greenhow has annexed the British statement in his Appendix.

"Great Britain," it is there said, "can show that in 1788, that is, four years before Gray entered *the mouth of the Columbia river*, Mr. Meares, a lieutenant of the Royal Navy, who had been sent by the East India Company on a trading expedition to the north-west coast of America, had already minutely explored the coast from the 49th to the 45th degree of north latitude; had taken formal possession of the Straits of De Fuca in the name of his sovereign; had purchased land, trafficked and formed treaties with the natives; and had actually entered *the bay of the Columbia*, to the north headland of which he gave the name of Cape Disappointment, a name which it bears to this day."

The language of this statement, it will be seen, is carefully worded, so as not to go beyond the actual facts narrated in Meares' Voyage; and further, on referring to the maps of the coasts and harbours which he visited, it continues, "in which

every part of the coast in question, including *the Bay of the Columbia* (*into which the log expressly states that Meares entered*), is minutely laid down, its delineation tallying in almost every particular with Vancouver's subsequent survey, and with the description found in all the best maps of that part of the world adopted at this moment."

The entry in Meares' log-book is as follows: "July 6., lat. 46° 10′; long. 235° 24′; northerly; strong gales, a great sea. Passed Cape Disappointment, *into Deception Bay*, and hauled out again, and passed Quicksand Bay, Cape Grenville, and Cape Look-out."

There is, therefore, nothing strange in the view which the British Commissioners really insisted upon, though it is strange that Mr. Greenhow should have misconstrued their statement, particularly as, in a paragraph almost immediately following, which will be referred to in full in its proper place, they readily admit that Mr. Gray, four years afterwards, "was the first to ascertain that this bay formed the outlet of a great river."

The further examination of these coasts by British subjects was suspended for a short time, as already seen, by the interference of the Spanish authorities. After, however, that Spain had definitively abandoned her pretensions to exclusive rights along the entire north-west coast of America, as far as Prince William's Sound, and agreed, by the third article of the Convention of 1790, that occupation should be the test of territorial title, the British Government judged it expedient "to ascertain with as much precision as possible the number, extent, and situation of any

settlement which had been made within the limits of 60° and 30° north latitude by any European nation, and the time when such settlement was made. With this object, amongst others more immediately connected with the execution of the first article of the Convention, Captain George Vancouver was despatched from Deptford with two vessels on January 6. 1791, and having wintered at the Sandwich Islands, where he was instructed to wait for further orders in reference to the restoration of the buildings and tracts of land, of which British subjects had been dispossessed at Nootka, he arrived off the coast of America on April 17. 1792, in about 39° 30′. He had received special instructions to ascertain the direction and extent of all such considerable inlets, whether made by arms of the sea, or by the mouths of great rivers, which might be likely to lead to, or facilitate in any considerable degree, an intercourse, for the purposes of commerce, between the north-west coast and the country upon the opposite side of the continent, which are inhabited or occupied by his Majesty's subjects;" but he was expressly required and directed "not to pursue any inlet or river further than it should appear to be navigable by vessels of such burden as might safely navigate the Pacific Ocean." (Introduction to Vancouver's Voyage, p. xix.)

Vancouver.

Having made a headland, which he supposed to be Cape Mendocino, Vancouver directed his course northward, examining carefully the line of coast, and taking soundings as he proceeded. In about latitude 42° 52′, longitude 235° 35′, he remarked a low projecting headland, apparently composed of *black* craggy rocks in the space between the woods

and the wash of the sea, and covered with wood nearlyto the edge of the surf, which, as forming a very conspicuous point, he distinguished by the name of Cape Orford. Mr. Greenhow has allowed his antipathy to Vancouver to lead him into an erroneous statement in respect to this headland. Vancouver (vol. i. p. 205. April 25. 1792) writes: "Some of us were of opinion that this was the Cape Blanco of Martin d'Aguilar; its latitude, however, differed greatly from that in which Cape Blanco is placed by that navigator; and its *dark* appearance, which might probably be occasioned by the haziness of weather, did not seem to entitle it to the appellation of Cape Blanco." He afterwards goes on to say, that at noon, when Cape Orford was visible astern, nearly in the horizon, they had a projecting headland in sight on the westward, which he considered to be Cape Blanco. He here ranged along the coast, at the distance of about a league, in hope of discovering the asserted river of D'Aguilar. "About three in the afternoon, we passed within a league of the cape above mentioned, and at about half that distance from some breakers that lie to the westward of it. This cape, though not so projecting a point as Cape Orford, is nevertheless a conspicuous one, particularly when seen from the north, being formed by a round hill, on high perpendicular cliffs, some of which are *white*, a considerable height from the level of the sea." It appeared to Vancouver to correspond in several of its features with Captain Cook's description of Cape Gregory, though its latitude, which he determined to be 43° 23', did not agree with that assigned by

C. Orford.

C. Blanco.

C. Gregory.

Captain Cook to that headland; but he again states, that there was a "probability of its being also the Cape Blanco of D'Aguilar, if land hereabouts the latter ever saw;" and that "a compact *white* sandy beach commenced, where the rocky cliffs composing it terminate."

Mr. Greenhow remarks: "Near the 43d degree of latitude, they sought in vain for the river, which Martin d'Aguilar was said to have seen, entering the Pacific thereabouts, in 1603: and they appeared inclined to admit as identical with the Cape Blanco of that navigator, a *high, whitish* promontory, in the latitude of 42° 52′, to which, however, they did not scruple to assign the name of Cape Orford." Had these observations been made in reference to Cape Gregory, the high cliffs of which are described by Vancouver as *white*, they would have been intelligible; but, directed as they are by Mr. Greenhow against a headland which Vancouver expressly describes a sa "wedge-like, low, perpendicular cliff, composed of *black craggy rock*, with breakers upon sunken rocks about four miles distant, in soundings of forty-five fathoms, *black* sandy bottom," they expose Mr. Greenhow himself to the charge of not being sufficiently scrupulous when assailing a writer, towards whom he confesses that he feels considerable animosity.

Having reached Cape Lookout, in 45° 32′ N. L., Vancouver examined with attention the portion of coast which Meares had seen. About ten leagues to the north of this headland, the mountainous inland country descends suddenly to a moderate height, and were it not covered with lofty timber, might

be deemed low land. Noon, "on the 27th of April, brought them in sight of a conspicuous point of land, composed of a cluster of hummocks, moderately high, and projecting into the sea from the low land above mentioned. These hummocks are barren, and steep near the sea, but their tops thinly covered with wood. On the south side of this promontory was the appearance of *an inlet, or small river*, the land behind not indicating it to be of any great extent; nor did it seem accessible to vessels of our burden, as the breakers extended from the above point two or three miles into the ocean, until they joined those on the beach, three or four leagues further south. On reference to Mr. Meares' description of the coast south of this promontory, I was at first induced to believe it to be Cape Shoalwater; but on ascertaining its localities, I presumed it to be that which he calls Cape Disappointment, and the opening south of it Deception Bay. This cape was found to be in latitude of 46° 19′, longitude 236° 6′ east. The sea had now changed from its natural to *river-coloured* water, the probable consequence of some streams falling into the bay, or into the opening north of it, through the low land. Not considering this opening worthy of our attention, I continued our pursuit to the northwest, being desirous to embrace the advantages of the now prevailing breeze and pleasant weather, so favourable to our examination of the coasts."

C. Disappointment.

The purport of Vancouver's observations in the passage just cited will not be correctly appreciated, unless his instructions are kept in mind, which directed his attention exclusively to such

inlets or rivers which should appear to be navigable to sea-going vessels, and be likely to facilitate in any considerable degree a communication with the north-west coast. Vancouver seems to have advanced a step beyond Heceta in observing the *river-coloured water*, and so determining the inlet not to be a strait of the sea; but he rightly decided that the opening in the north part of the bay was not worthy of attention, either in respect to his main object of discovering a water-communication with the north-west coast, or to the prospect of its affording a certain shelter to sea-going vessels.

Mr. Robert Gray.

Vancouver, as he approached De Fuca's Straits on 29th April, when off Cape Flattery, fell in with the merchant ship Columbia, commanded by Mr. Robert Gray, which had sailed from Boston on the 28th Sept. 1788. Captain Gray had formerly commanded the Washington, when that vessel and the Columbia, commanded by Captain John Kenrick, visited Nootka in 1788. Having given Vancouver some information respecting De Fuca's Straits, he stated that he had "been off the mouth of a river in the latitude of 46° 10′, where the outset, or reflux, was so strong as to prevent his entering it for nine days. This," continues Vancouver, "was probably the opening passed by us on the forenoon of the 27th, and was apparently then inaccessible, not from the current, but from the breakers that extended across it." Gray at this time had not succeeded in passing the bar at the mouth of the Columbia. After parting from Vancouver, he continued his course to the southward for the purposes of his summer trade. The extract from

his own log-book, which Mr. Greenhow has inserted in his Appendix, will furnish the best account of his proceedings:—"May 11th, at 4 A.M. saw the entrance of our desired port bearing E.S.E., distance six leagues; in steering sails, and hauled our wind in shore. At 8 A.M., being a little to windward of the entrance into the harbour, bore away and run in E.N.E. between the breakers, having from five to seven fathoms water. When we came over the bar, we found this to be a large river of fresh water, up which we steered." Gray passes the bar of the Columbia river.

In the British statement it is admitted that "Mr. Gray, finding himself in the bay formed by the discharge of the waters of the Columbia into the Pacific, was the first to ascertain that this bay formed the outlet of a great river — a discovery which had escaped Lieutenant Meares, when in 1788, four years before, he entered the same bay."

This passage has been quoted to show that the claim of Captain Gray to the honour of having first crossed the bar of the river has not been impeached by the British Commissioners. He gave to the river the name of his own vessel, the Columbia.

The Columbia remained at anchor on the 12th and 13th. On the 14th of May, Gray weighed anchor, and stood up the river N.E. by E.

The log-book of the Columbia furnishes the following extract: — Log-book of the Columbia.

"We found the channel very narrow. At 4 P.M. we had sailed upwards of twelve or fifteen miles, when the channel was so very narrow that it was almost impossible to keep in it, having from three to eighteen fathoms water, sandy bottom. At half-

past four the ship took ground, but she did not stay long before she came off, without any assistance. We backed her off stern-foremost into three fathoms, and let go the small bower, and moved ship with kedge and hawser. The jolly-boat was sent to sound the channel out, but found it not navigable any further up; *so of course we must have taken the wrong channel. So ends*, with rainy weather; many natives alongside." On the following day Gray unmoored, and dropped down the river with the tide. On the 18th he made the latitude of the entrance to be 46° 17′ north. On the 20th he succeeded, after some difficulty, in beating over the bar out to sea.

This log-book, the authenticity of which is vouched for by Mr. Bulfinch, of Boston, one of the owners of the Columbia, affords the best evidence that Captain Gray's claim is limited to the discovery of the *mouth of the Columbia*, a discovery different indeed *in degree* from Heceta's or Vancouver's, and entitled to higher consideration, but not different *in kind*. It must be remembered that the problem to be solved was the discovery of the Great River of the West, but this problem was surely not solved by Gray, who expressly states that the channel which he explored was not navigable any further up than twelve or fifteen miles from the entrance; "so of course," he adds, "we must have taken the wrong channel." But such a description would hardly have convinced the world that Gray had succeeded in discovering the Great River, unless Lieutenant Broughton had subsequently succeeded in entering the right channel, and had explored its

course for the distance of more than one hundred miles from the sea. But the reputation of this enterprising man needs no fictitious laurels. He was decidedly the first to solve the difficult question of there being a passage, such as it is, over the bar of the river.

Mr. Greenhow, in commenting upon Gray's discovery, observes, "Had Gray, after parting with the English ships, *not returned to the river*, and ascended it as he did, there is every reason to believe that it would have long remained unknown; for the assertion of Vancouver, that no opening, harbour, or place of refuge for vessels was to be found between Cape Mendocino and the Strait of Fuca, and that this part of the coast formed one compact, solid, and nearly straight barrier against the sea, would have served completely *to overthrow the evidence of the American fur-trader*, and to prevent any further attempts to examine those shores, or even to approach them."

Vancouver defended.

Now the evidence of the American fur-trader, *had he not returned to the river*, would have needed no Vancouver to overthrow it, for it would have amounted to this, that Gray had been off the mouth of a river for nine days, without being able to enter it; whereas Vancouver's own statement would have been, that on the south side of Cape Disappointment there was the appearance of an inlet or small river, "which did not however seem accessible for vessels of our burthen," as breakers extended right across it. Mr. Greenhow misrepresents Vancouver, when he states that Meares' opinion was subscribed without qualification by Vancouver, for Vancouver carefully limits his opinion of the river to its being

inaccessible to vessels of equal burthen with his own sloop of war, the Discovery.

Gray, after entering the Columbia, appears to have returned to Nootka, and to have given to Señor Quadra, the Spanish commandant, a sketch of the river. Vancouver, having attempted in vain to conclude a satisfactory arrangement with Quadra in respect to the fulfilment of the first article of the Nootka convention, determined to re-examine the coast of New Albion. With this object he sailed southward in the Discovery, accompanied by the Chatham and the Dædalus. The Dædalus having been left to explore Gray's harbour in 46° 53′, the Discovery and Chatham proceeded round Cape Disappointment, and the Chatham, under Lieutenant Broughton, was directed to lead into the Columbia river, and to signalise her consort if only four fathoms water should be found over the bar. The Discovery followed the Chatham, till Vancouver found the water to shoal to three fathoms, with breakers all around, which induced him to haul off to the westward, and anchor outside the bar in ten fathoms. The Chatham, in the mean time, cast anchor in the midst of the breakers, where she rode in four fathoms, with the surf breaking over her. "My former opinion," writes Vancouver, "of this port being inaccessible to vessels of our burthen was now fully confirmed, with this exception, that in very fine weather, with moderate winds and a smooth sea, vessels not exceeding 400 tons might, so far as we were able to judge, gain admittance." It may be observed that the vessels of the Hudson's Bay Company, by which

The Chatham crosses the bar.

the commerce of this part of the country is almost exclusively carried on, do not exceed 360 tons, and draw only fourteen feet water. Captain Wilkes, in the United States Exploring Expedition, vol. iv. p. 489., speaks of a vessel of from 500 to 600 tons, the Lausanne, having navigated the Columbia; on the other hand, the Starling, which accompanied the Sulphur exploring vessel, under Captain Belcher, in July 1839, left her rudder on the bar, and the American corvette, the Peacock, which attempted to enter the river in July 1841, was lost in very fine weather, having been drifted amongst the breakers by the set of the current.

When it is known that the vessels of the Hudson's Bay Company have been obliged to lie-to off the mouth of the Columbia for upwards of two months before they could venture to cross the bar, and that vessels have been detained inside the bar for upwards of six weeks, it must be acknowledged that Vancouver's declaration of the probable character of the river has not fallen very wide of the mark.

The Discovery driven out to sea.

On the next day the Chatham succeeded, with the flood-tide, in leading through the channel, and anchored in a tolerably snug cove inside Cape Disappointment; but the Discovery, not having made so much way, was driven out by a strong ebb tide into 13 fathoms water, where she anchored for the night, and on the following day was forced by a gale of wind to stand out to sea, and to abandon all hope of regaining the river.

On the Chatham rounding the inner point of Cape Disappointment, they were surprised to hear a gun fired from a vessel, which hoisted English

colours, and proved to be the Jenny, a small schooner of Bristol, commanded by Mr.. James Baker, which had sailed from Nootka Sound direct to England, before Vancouver started. This cove or bay inside Cape Disappointment was in consequence named, by Lieut. Broughton, Baker's Bay, which name it retains, and it appeared from Captain Baker's account that this was not the first occasion of his entering the river, but that he had been there in the earlier part of the year.

The Chatham in the mean time proceeded up the inlet, and having in her course grounded for a short time on a shoal, anchored ultimately a little below the bay which had terminated Gray's researches, to which Gray had given his own name in his chart. The sketch of this, with which Vancouver had been favoured by the Spanish commandant at Nootka, was found by Broughton not to resemble much what it purported to represent, nor did it mark the shoal on which the Chatham grounded, though it was an extensive one, lying in mid-channel. The bay, for instance, which Lieut. Broughton found to be not more than fifteen miles from Cape Disappointment, was, according to the sketch, thirty-six miles distant. Broughton left the Chatham here, and determined to pursue the further examination of the channel in the cutter and the launch.

Lieut. Broughton ascends the river with his boats.

At the distance of about twenty-five miles from the sea, Broughton found the stream narrow rather suddenly to about half a mile in breadth, which seemed to warrant him in considering the lower part, (the width of which was from three to seven miles,) to

be a sound or inlet, and the true entrance of the river itself to commence from the point where it contracted itself. Broughton continued his ascent for seven days, making but slow progress against a strong stream. At the end of that time he was obliged to return from want of provisions, having reached a point which he concluded to be about 100 miles distant from the Chatham's anchorage, and nearly 120 from the sea. He was the more readily reconciled to the abandonment of any further examination, "because even thus far the river could hardly be considered as navigable for shipping." Previously, however, to his departure, he formally "took possession of the river and the country in its vicinity in his Britannic Majesty's name, having every reason to believe that the subjects of no other civilised nation or state had ever entered this river before." Broughton had fallen in with large parties of Indians in his ascent of the river, and had been kindly received by them. Amongst these was a friendly old chief, who accompanied them almost throughout the voyage, and who assisted at the ceremony and drank his Majesty's health on the occasion." It may be reasonably suspected that this worthy old chief would have as readily joined the next comers in drinking the health of the King of Spain, or the President of the United States. From him Broughton endeavoured to obtain further informa- respecting the upper country. "The little that could be understood was, that higher up the river, they would be prevented from passing by falls. This was explained by taking water up in his

Takes possession of the country.

hands, and imitating the manner of its falling from rocks, pointing at the same time to the place where the river rises, indicating that its source in that direction would be found at a great distance."

Point Vancouver.

The furthest angle of the river which Broughton reached was called by him Point Vancouver, and upon it stands in the present day Fort Vancouver, the chief establishment of the Hudson's Bay Company. A little above this are the Cascades, a series of falls and rapids extending more than half a mile, which form the limit of the tide-way; about thirty miles higher up are the Dalles, where the river rushes rapidly between vast masses of rocks, and about four miles further are the *Chutes* or Falls of the Columbia, where the river first enters the gap in the Cascade mountains, through which it finds its way to the ocean. Lieutenant Broughton, having occupied twelve days in the examination of the channel, prepared to join the Discovery without delay; but for four days the surf broke across the passage of the bar with such violence, as to leave no apparent opening. At last he succeeded in beating out, the Jenny schooner leading, as her commander Mr. Baker was better acquainted with the course of the channel, and after nearly losing their launch and the boat-keeper in the surf, they once more reached the open sea. Such is the summary of the account, which may be perused in full in the second volume of Vancouver's Voyage.

The Cascades.

The Dalles.

The Chutes.

Mr. Greenhow's definition of an inlet.

Mr. Greenhow (p. 248.) considers that the distinction which Broughton and Vancouver made "be-

tween the upper and lower portion of the Columbia, is entirely destitute of foundation, and at variance with the principles of our whole geographical nomenclature: Inlets and sounds," he continues, "are arms of the sea running up into the land, and their waters, being supplied from the sea, are necessarily salt; the waters of the Columbia are on the contrary generally fresh and palatable within ten miles of the Pacific, the violence and overbearing force of the current being sufficient to prevent the further ingress of the ocean. The question appears at first to be of no consequence: the following extract from Vancouver's Journal will, however, serve to show that the quibble was devised by the British navigators, with the unworthy object of depriving Gray of the merits of his discovery:— 'Previously to his (Broughton's) departure, he formally took possession of the river, and the country in its vicinity, in his Britannic Majesty's name, having every reason to believe that the subjects of no other civilised nation or state had ever entered this river before. In this opinion he was confirmed by Mr. Gray's sketch, in which it does not appear that Mr. Gray either saw or ever was within five leagues of its entrance.' This unjust view has been adopted by the British Government and writers, and also, doubtless from inadvertency, by some distinguished authors in the United States. It may, indeed, be considered fortunate for Gray, that by communicating the particulars of his discoveries, as he did, to Quadra, he secured an unimpeachable witness of his claims: had he not done so, the world would probably never have

learned that a citizen of the United States was the first to enter the greatest river flowing from America into the Pacific, and to find the only safe harbour on the long line of coast between Port San Francisco and the Strait of Fuca."

Mr. Greenhow may be perfectly justified in disputing the propriety of Lt. Broughton's distinction. The words of the latter are,— "Between the ocean and that which should properly be considered the entrance of the river, is a space from three to seven miles wide, intricate to navigate, on account of the shoals that extend nearly from side to side, and it ought rather to be considered as *a sound* than as constituting a part of the river, since the entrance into the river, which they reached about dark, was found not to be more than half a mile wide, formed by the contracting shores of the sound." It may fairly be admitted that the Ordinary use of the terms "sound," or "inlet," warrant the verbal criticism of Mr. Greenhow, and that they are more usually employed to distinguish arms of the sea where there is no fresh water, or tideways outside the bars of rivers. Lieutenant Broughton, if we may judge from the context, would have been more correct had he used the term "estuary" instead of "sound," but "in common understanding," as Lord Stowell has observed, "the embouchure or mouth of a river is that spot where the river enters the open space to which the sea flows, and where the points of the coast project no further." (Twee Gebroeden, 3 Robinson's Reports, p. 34.) At the same time, having carefully perused Vancouver's journal, a protest must be entered against any reader of that work,

Lord Stowell on the mouths of rivers.

particularly against one who occupies the position which Mr. Greenhow fills, attributing such motives to the British navigator, or insinuating such a probability as that Gray's discovery would have been suppressed by Vancouver, had not Gray fortunately secured Quadra as an unimpeachable witness to it. Mr. Greenhow's jealousy for the fame of his countryman may be excusable up to a certain point, but when he states that Vancouver "did not hesitate to adopt unworthy means to deprive the Americans of the reputation which they had justly earned by their labours in exploring, and to blacken their characters as individuals," he has allowed an unreasonable sensitiveness to hurry him into the commission of the very fault which he censures in others, and has laid himself open to the identical charge, mutatis mutandis, which he has set up against Vancouver.

Had there been any *substantial* misrepresentation on the part of Vancouver in respect to what Gray actually did discover, "a want of good faith" might have been reasonably imputed to him. Happily, however, for Vancouver's memory, the extract from the log-book of the Columbia bears out all the facts which Lieutenant Broughton alleges as to the extent of Gray's researches. "From this point," the latter says, alluding to a remarkable projecting point on the southern side, appearing like an island, a little above Point George, to which the name of Tongue Point was given, "was seen the centre of a deep bay, lying at the distance of seven miles N. 26 E. This bay terminated the researches of Mr. Gray; and to commemorate his discovery, it was called

Extent of Gray's researches.

after him, Gray's Bay." "In Mr. Gray's sketch," Broughton further informs us, "an anchor was placed in this bay," so that he does not attempt in any way to misrepresent the locality of the spot where Gray's researches terminated. Lieutenant Broughton certainly denies the correctness of the sketch in respect to the distance of this bay from the entrance of the river. "It was not more," he writes, "than fifteen miles from Cape Disappointment, though according to the sketch it measures thirty-six miles." But the log-book itself confirms approximatively Lieutenant Broughton's statement, for it makes the distance of the spot where Gray brought up his vessel to be about twenty-two or twenty-five miles from the entrance between the bars, and Cape Disappointment is six miles distant from the entrance, so that there must have been an error in the sketch, if we admit the accuracy of the log-book.

Progressive discovery of the Columbia river.

The result of this inquiry seems fully to warrant the position which the British commissioners insisted on in 1826–7, that the discovery of the Columbia river was *a progressive discovery*. Heceta made the first step in 1775, when he discovered the bay, and concluded that "the place was the mouth of some great river, or of some passage to another sea;" but Heceta's report was not made public by the Spanish authorities. Meares, in 1788, confirmed Heceta's discovery of the bay, but impugned the correctness of the Spanish charts, as to there being a river there with a good port; his Voyages were published in London in 1790. Vancouver, having seen Meares' account before he left

England, examined the bay in April 1792, and at that time came to the conclusion that, though there was river-coloured water in the bay, yet the opening was not worthy of attention, as being inaccessible to vessels of the same burden as the Discovery: his account was published in 1798. Gray, in the May following, after having on a former occasion beat about in the bay for nine days ineffectually, succeeded on his second visit in passing the bar, and explored the estuary for more than twenty miles: the extract of his log-book, which relates the particulars, was not made public before 1816. Lieutenant Broughton in the same year may be considered to have completed the discovery of the river, by ascending it for more than eighty miles above the limits of Gray's researches, almost to the foot of the Cascades, where the tide ceases to be felt: the particulars of this expedition were published in the 2nd vol. of Vancouver's Voyage, in 1798.

The plenipotentiary of the United States, Mr. Gallatin, on the other hand, repudiated the notion of Gray's enterprise being considered as only a step in the progress of discovery, and maintained that the discovery of the river belonged exclusively to the United States; that Quadra (or he should have said, Heceta) had overlooked it; that Meares had likewise failed, and Vancouver had been not more fortunate; and that Broughton's merit consisted merely in performing with fidelity the mechanical duty of taking the soundings 100 miles up its course. Upon the fact of this asserted first discovery in 1792, followed by the settlement of Astoria

in 1812, Mr. Rush announced, for the first time, in 1824, "that the United States claimed in their own right, and in their absolute and exclusive sovereignty and dominion, the whole of the country west of the Rocky Mountains from the 42d to at least as far up as the 51st degree of north latitude." "It had been ascertained that the Columbia extended by the River Multnomah to as low as 42 degrees north, and by Clarke's river to a point as high up as 51 degrees, if not beyond that point; and to this entire range of country, contiguous to the original dominions, and made a part of it by the almost intermingling waters of each, the United States," he said, "considered their title as established, by all the principles that had ever been applied on this subject by the powers of Europe to settlements in the American hemisphere. I asserted," he continued, "that a nation discovering a country, by entering the mouth of its principal river at the sea coast, must necessarily be allowed to claim and hold as great an extent of the interior country as was described by the course of such principal river, and its tributary streams."

Doctrine of discovery set up by the United States.

Great Britain formally entered her dissent to such a claim, denying that such a principle or usage had been ever recognised amongst the nations of Europe, or that the expedition of Captain Gray, being one of a purely mercantile character, was entitled to carry with it such important national consequences. (British and Foreign State Papers, 1825–6.)

Denied by Great Britain.

In the subsequent discussions of 1826–7, Great Britain considered it equally due to herself and to other powers to renew her protest against the doc-

trine of the United States, whilst on the other hand the United States continued to maintain, that Gray's discovery of the Columbia river gave, by the acknowledged law and usage of nations, a right to the whole country drained by that river and its tributary streams.

Having now passed in review the main facts connected with the discovery and occupation of the Oregon territory, we may proceed to consider the general principles of international law which regulate territorial title.

CHAPTER VII.

ON THE ACQUISITION OF TERRITORY BY OCCUPATION.

Connexion of the Sovereignty of a Nation with the Domain.—Vattel. The Sovereignty and Eminent Domain (Dominium eminens) attend on Settlement by a Nation—Settlement by an Individual limited to the Acquisition of the Useful Domain (Dominium utile). A Nation may occupy a Country by its Agents, as by settling a Colony. Kluber's Droits des Gens.—The Occupation must be the Act of the State.—Occupation constitutes a perfect Title.—Bracton de Legibus.—Wolff's Jus Gentium.—Acts accessorial to Occupation, such as Discovery, Settlement, &c. create only an imperfect Title.

"WHEN a nation takes possession of a country to which no prior owner can lay claim, it is considered as acquiring the *empire* or sovereignty over it, at the same time with the *domain*. For, since the nation is free and independent, it can have no intention, in settling in a country, to leave to others the rights of command, or any of those rights that constitute sovereignty? The whole space over which a nation extends its government, becomes the seat of its jurisdiction, and is called its *territory*." (Vattel, b. i. § 205.)

The acquisition of sovereignty.

The acquisition of sovereignty, therefore, attends as a necessary consequence upon the establishment of a nation in a country. But a nation may establish itself in a country, either by immigration in a body, or by sending forth a colony; and when a nation takes possession of a vacant country, and

settles a colony there, " that country, though separated from the principal establishment or mother country, naturally becomes a part of the state, equally with its ancient possessions." (Vattel, b. i. § 210.) Vattel.

The right of *domain* in a nation corresponds to the right of *property* in an individual. But every nation that governs itself by its own authority and laws, without dependence on any foreign power, is a sovereign state; and when it acts as a nation, it acts in its sovereign capacity. When a nation therefore occupies a vacant country, it imports its sovereignty with it, and its sovereignty entitles it not merely to a disposing power over all the property within it, which is termed its Eminent Domain, but likewise to an exclusive right of command in all places of the country which it has taken possession of. In this respect, then, a nation differs from an individual, that, although an independent individual may settle in a country which he finds without an owner, and there possess an independent domain (the dominium utile, as distinguished from the dominium eminens), yet he cannot arrogate to himself an exclusive right to the country, or to the empire over it. His occupation of it would be, as against other nations, rash and ridiculous (Vattel, b. ii. § 96); and it would be termed, in the language of the Jus Gentium, a " temeraria occupatio, quæ nullum juris effectum parere potest." (Wolffii Jus Gentium, § 308.) Eminent domain. Dominium utile.

A nation, however, may delegate its sovereign authority to one or more of its members for the occupation of a vacant country, equally as for

other purposes, where it cannot act in a body; in such cases the practice of nations allows it to be represented by an agent. Thus the right of settling a colony is a right of occupation by an agent. The colonists represent the nation which has sent them forth, and occupy their new country in the name of the mother country. But the colonists must be sent forth *by the public authority of the nation*, otherwise they will possess no national character, but will be considered to be a body of *emigrants*, who have abandoned their country.

Settling a colony.

Kluber.

Thus, Kluber, in his "Droit des Gens Modernes de l'Europe:"—"Un état peut acquérir des choses qui n'appartiennent à personne (*res nullius*) par l'occupation (originaire); les biens d'autrui au moyen de conventions (occupation dérivative). . . . Pour que *l'occupation* soit légitime, la chose doit être susceptible d'une propriété exclusive; elle ne doit appartenir à personne; *l'état doit avoir l'intention d'en acquérir la propriété, et en prendre possession* (the State ought to have an intention to acquire the right of property in it, and to take possession of it); c'est à dire, la mettre entièrement à sa disposition et dans son pouvoir physique."

Occupation.

Occupation, then, in this sense of the word, denotes the taking possession of a territory previously vacant, which has either always been unoccupied, or, if ever occupied, has been since abandoned. It constitutes a perfect title, and its foundation may be referred to an axiom of natural law: "Quod enim ante nullius est, id ratione naturali occupanti conceditur." (Dig. l. 3. D. de Acq. Rer. Dom.) This principle, engrafted into the Roman law, was as

fully recognised by Bracton and by Fleta:—"Jure autem gentium sive naturali dominia rerum acquiruntur multis modis. Imprimis, per occupationem eorum, quæ non sunt in bonis alicujus, et quæ nunc sunt ipsius regis de jure civili, et non communia ut olim. (Bracton de Leg., l. ii. c. 1.) Bracton.

Amongst professed writers upon international law, Wolff, who is justly considered as the founder of the science, and who, in his voluminous writings, furnished the stores out of which Vattel compiled his "Law of Nations," has set forth so clearly this principle, as that upon which title by occupation is based, that his words may be quoted from Luzac's French translation of his "Institutions du Droit de la Nature et des Gens:"—

"On appelle *occupation*, un fait par lequel quelqu'un déclare qu'une chose qui n'est à personne doit être à lui, et la réduit en tel état qu'elle peut être sa chose. Il paraît de là, que le droit d'occuper une chose, ou de s'en emparer, appartient naturellement à chacun indifféremment, ou bien que c'est un droit commun de tous les hommes, et comme on appelle manière primitive d'acquérir, celle par laquelle on acquiert le domaine d'une chose qui n'est à personne, il s'ensuit que *l'occupation est la manière primitive d'acquérir.*" (Part ii. ch. ii. § ccx.) Wolff.

As, however, the term *occupation* has come to signify in common parlance rather a temporary holding than a permanent possession, — e. g., the occupation of Ancona by the French, the occupation of Lisbon by the English, the occupation of the Four Legations by the Austrians, there is an inconvenience in its ambiguity, and from this circum-

Occupancy.

stance it has resulted, that *occupancy* is frequently employed to designate what is, properly speaking, occupation. This however is to be regretted, as the word occupancy is required in its own sense to mark the right to take possession, as distinct from the right to keep possession,—the *jus possidendi* from the *jus possessionis*,—the *jus ad rem*, as civilians would say, from the *jus in re*. Thus the right of a nation to colonise a given territory to the exclusion of other nations is a right of *occupancy;* the right of the colonists to exclude foreigners from their settlements would be a right of *occupation*.

Mr. Wheaton, in his Elements of International Law (l. i. chap. iv. p. 205.), says, "The exclusive right of every independent state to its territory and other property is founded upon the title originally acquired by *occupancy*, and subsequently confirmed by the presumption arising from the lapse of time, or by treaties and other compacts of foreign states."

Conditions of its validity.

It may be gathered from these writers, that to constitute a valid territorial title by occupation, the territory must be previously vacant (*res nullius*), and the *state* must intend to take and maintain possession: and that the vacancy of the territory may be presumed from the absence of inhabitants, and will be placed beyond question by the acquiescence of other nations. If these conditions are fulfilled, the proprietary title which results is *a perfect title against all other nations*.

Acts accessorial to occupation.

There are however several acts, that are accessorial to occupation, which do not separately constitute a perfect title. Such acts are Discovery, Set-

tlement, Demarcation. Thus, discovery may not be accompanied with any intention to occupy, or may not be followed up by any act of occupation within a reasonable time; settlement may be effected in territory not vacant; boundaries may be marked out which encroach upon the territory of others; so that acts of this kind will, separately, only found an imperfect or conditional title: their combination, however, under given circumstances, may establish an absolute and perfect title.

CHAPTER VIII.

ON TITLE BY DISCOVERY.

Discovery not recognised by the Roman Law.—Wolff. — The Discovery must be notified. — Illustration of the Principle in reference to Nootka Sound.—Vattel.—Discovery must be by virtue of a Commission from the Sovereign. — Must not be a transient Act.—Martens' Précis du Droit des Gens.—Kluber. — Bynkershoek. — Mr. Wheaton. — Practice of Nations. — Queen Elizabeth.—Negotiations between Great Britain and the United States, in 1824.—Nootka Sound Controversy.—Discussions between the United States and Russia, in 1822.—Declaration of British Commissioners, in 1826.—Mr. Gallatin's View.—Conditions attached to Discovery. — No second Discovery. — Wolff. — Lord Stowell. — Progressive Discovery.—Dormant Discoveries inoperative for Title.

AMONG the acts which are accessorial to occupation, the chief is Discovery. The title, however, which results from discovery, is only an imperfect title. It is not recognised in the Roman law, nor has it a place in the systems of Grotius or Puffendorf. The principle, however, upon which it is based is noticed by Wolff:—

Title from discovery not in the Roman law.

"Pareillement, si quelqu'un renferme un fonds de terre dans les limites, ou la destine à quelque usage par un acte non passager, ou qui, se tenant sur ce fonds limité, il dise en présence d'autres hommes, qu'il veut que ce fonds soit à lui, il s'empare." (Institutes du Droit des Gens, § 213.)

To this passage M. Luzac has appended the

following note, pointing out the application of the principle to international relations:—

"Nous ne trouvons pas cette occupation dans le droit Romain. C'est sur elle que sont fondés les droits que les puissances s'attribuent, en vertu des découvertes."

It will be seen from the text of M. Wolff, that the intention to take possession at the time of discovery must be declared. The comity of nations, then, presumes that the execution will follow the intention. But the reason of the thing requires that the discovery should be notified at the time when it takes place, otherwise, where actual possession has not ensued, the presumption will be altogether against a discovery, or if there had been a discovery, that it was a mere passing act, that the territory was never taken possession of, or if so, was abandoned immediately. Unless then the intention to appropriate can be presumed from the announcement of the discovery, which the comity of nations will respect, — if the first comer has not taken actual possession, but has passed on, the presumption will be that he never intended to appropriate the territory. Thus a discovery, when it has been concealed from other nations, has never been recognised as a good title: it is an inoperative act.

Discovery should be notified.

A case in point may be cited to illustrate the application of this principle. Mr. Greenhow (p. 116.) observes, in reference to the voyage of Perez in 1775, — "The Government of Spain perhaps acted wisely in concealing the accounts of this expedition, which reflected little honour on the courage or the science of the navigators: but it

has thereby deprived itself of the means of establishing beyond question the claim of Perez to the discovery of the important harbour called Nootka Sound, which is now, by general consent, assigned to Captain Cook."

Nootka Sound.

Vattel.

Vattel (b. i. l. xviii. § 207.) discusses this title at large :—

"All mankind have an equal right to things that have not yet fallen into the possession of any one, and those things belong to the person who first takes possession of them. When therefore a nation finds a country uninhabited, and without an owner, it may lawfully take possession of it, and *after it has sufficiently made known its will in this respect*, it cannot be deprived of it by another nation. Thus navigators going on voyages of discovery, furnished *with a commission from their sovereign*, and meeting with islands or other lands in a desert state, have taken possession of them in the name of the nation; and this title has been usually respected, provided it was soon after followed by a real possession."

Navigators furnished with a commission from their sovereign.

According to this statement, the act of discovery must be sanctioned by a commission from the sovereign, and the will of the nation to take possession must be by its agent sufficiently made known. What acts should be respected by the courtesy of nations, and be held sufficient to make known formally the will of a nation to avail itself of a discovery, has been a subject of much dispute. The tendency, however, both of writers and statesmen, has been to limit rather than to extend the title by discovery, ever since the Papal Bulls of

the 16th century enlarged it to an inconvenient extent, to the exclusive benefit of two favoured nations.

Thus Vattel: —"The law of nations will, therefore, not acknowledge the property and sovereignty of a nation over any uninhabited countries except those of which it has really taken actual possession, in which it has formed settlements, or of which it makes actual use. In effect, when navigators have met with desert countries in which those of other nations had, in their transient visits, erected some monuments to show their having taken possession of them, they have paid as little regard to that empty ceremony as to the regulation of the popes, who divided a great part of the world between the crowns of Castile and Portugal." Transient visits.

To the same purport, Martens, in his Précis du Droit des Gens, § 37: — Martens.

Supposé que l'occupation soit possible, il faut encore qu'elle ait eu lieu effectivement, — que la fait de la prise de possession ait concouru avec la volonté manifeste de s'en approprier l'objet. La simple déclaration de volonté d'une nation ne suffit pas non plus qu'une donation papale, ou une convention entre deux nations pour imposer à d'autres la devoir de s'abstenir de l'usage ou de l'occupation de l'objet en question. Le simple fait d'avoir été le premier à découvrir ou à visiter une île, &c. abandonnée ensuite, semble insuffisant, même de l'aveu des nations, tant qu'on n'a point laissé de traces permanentes de possession et de volonté, et ce n'est pas sans raison qu'on a souvent

disputé entre les nations, comme entre les philosophes, si des croix, des poteaux, des inscriptions, &c. suffisent pour acquérir ou pour conserver la propriété exclusive d'un pays qu'on ne cultive pas."

Kluber. Kluber, to the same effect, writes thus : (§ 126.) "Pour acquérir une chose par le moyen de l'occupation, il ne suffit point d'en avoir seulement l'intention, ou de s'attribuer une possession purement mentale ; la déclaration même de vouloir occuper, faite antérieurement à l'occupation effectuée par un autre, ne suffirait pas. Il faut qu'on ait réellement occupé le premier, et c'est par cela seul qu'en acquérant un droit exclusif sur la chose, on impose à tout tiers l'obligation de s'en abstenir. L'occupation d'une partie inhabitée et sans maître du globe de la terre, ne peut donc s'étendre plus loin qu'on ne peut tenir pour constant qu'il y ait eu *effectivement prise de possession, dans l'intention de s'attribuer la propriété.* Comme preuves d'une pareille prise de possession, ainsi que de la continuation de la possession en propriété, peuvent servir tous les signes extérieurs qui marquent l'occupation et la possession continue."

On this passage there is the following note:—"Le droit de propriété d'état peut, d'après le droit des gens, continuer d'exister, sans que l'état continue la possession corporelle. Il suffit qu'il existe un signe qui dit, que la chose n'est ni *res nullius*, ni délaissée. En pareil cas personne ne saurait s'approprier la chose, sans ravir de fait, à celui qui l'a possédée jusqu'alors en propriété, ce qu'il y a opéré de son influence d'une manière légitime : enlever ceci ce serait blesser le droit du propriétaire."

It would be difficult to determine theoretically what would constitute a sufficient sign, that the territory is not vacant, or abandoned. Bynkershoek, who was opposed to the continuance of proprietary right from discovery, unless corporeal possession was maintained, subsequently qualified his view. "Præter animum possessionem desidero, sed qualemcunque, quæ probet, me nec corpore desiisse possidere." (De Dominio Maris, ch. i. De Origine Dominii. Bynkershoek.

Mr. Wheaton, in his work on International Law (vol. i. ch. iv. § 5.), writes thus:—"The claim of European nations to the possessions held by them in the New World discovered by Columbus and other adventurers, and to the territories which they have acquired on the continents and islands of Africa and Asia, was originally derived from discovery or conquest and colonisation, and has since been confirmed in the same manner by positive compact." Wheaton.

The practice of nations seems fully to bear out the theory of jurists, as it may be gathered from the language of sovereigns and statesmen. Thus, in reference to the north-west coast of America, on occasion of the earliest dispute between the crowns of Spain and England, Queen Elizabeth refused to admit the exclusive pretensions of the Spaniards. When Mendoza, the Spanish ambassador, remonstrated against the expedition of Drake, she replied, "that she did not understand why either her subjects, or those of any other European prince, should be debarred from traffic in the Indies: that, as she did not acknowledge the Spa- Practice of nations. Queen Elizabeth.

niards to have any title by donation of the Bishop of Rome, so she knew no right they had to any places other than those they were in actual possession of; for that their having touched only here and there upon a coast, and given names to a few rivers or capes, were such insignificant things as could in no ways entitle them to a propriety further than in the parts where they actually settled, and continued to inhabit." (Camden's Annals, anno 1580.)

Such was the language of the Crown of England in the sixteenth century, and in no respect is the language of Great Britain altered in the present day. Thus, in reference to the negotiations between Great Britain and the United States, in 1824, Mr. Rush, in a letter to Mr. Adams, of August 12. 1824, writes thus:—"As to the alleged prior discoveries of Spain all along that coast, Britain did not admit them, but with great qualification. She could never admit that the mere fact of Spanish navigators having first seen the coast at particular points, even where this was capable of being substantiated as the fact, without any subsequent or efficient acts of sovereignty or settlement following on the part of Spain, was sufficient to exclude all other nations from that portion of the globe." (State Papers, 1825–26, p. 512.)

Negotiations in 1824

But the Spanish crown itself, on the occasion of the Nootka-Sound controversy, felt that a claim to exclusive territorial title could not be reasonably maintained on the plea of mere discovery. Thus, in the Declaration of his Catholic Majesty, on

Nootka-Sound controversy.

June 4. 1790, which was transmitted to all the European Courts, and consequently bound the Crown of Spain in the face of all nations, the following precise language was employed:—

"Nevertheless, the King does deny what the enemies to peace have industriously circulated, that Spain extends pretensions and rights of sovereignty over the whole of the South Sea, as far as China. When the words are made use of, 'In the name of the King, his sovereignty, navigation, and exclusive commerce to the continent and islands of the South Sea,' it is the manner in which Spain, in speaking of the Indies, has always used these words,—that is to say, to the continent, islands, and seas which belong to his Majesty, *so far as discoveries have been made and secured to him by treaties and immemorial possession, and uniformly acquiesced in*, notwithstanding some infringements by individuals, who have been punished upon knowledge of their offences. And the King sets up no pretensions to any possessions, the right to which he cannot prove by irrefragable titles."

The pretensions of Spain to absolute sovereignty, commerce, and navigation, had already been rejected by the British Government, and they had insisted that English subjects, trading under the British flag, "have an indisputable right to the enjoyment of a free and uninterrupted navigation, commerce, and fishery; and to the possession of such establishments as they should form, *with the consent of the natives of the country, not previously occupied by any of the European nations.*

Again, the Crown of Spain, in demanding assist-

ance from France, according to the engagements of the Family Compact, rested her supposed title upon "treaties, demarcations, *takings of possession*, and the most decided acts of sovereignty exercised by the Spaniards from the reign of Charles II., and authorised by that monarch in 1692."

It will thus be seen that Spain, in setting up a title by discovery, supported her claims by alleging that the act was authorised by the Crown, was attended with "takings of possession," and was confirmed by treaties, e. g., that of Utrecht.

Russia and the United States.

To a similar purport, in the discussions which took place between Russia and the United States of America, in respect to the north-west coast of America, which ultimately resulted in the convention signed at St. Petersburgh, $\frac{5}{17}$ April, 1824, the Chevalier de Poletica, the Russian minister at Washington, in his letter of 28th February, 1822, to the American Secretary of State, grounded the claims of Russia upon these three bases, as required by the general law of nations and immemorial usage among nations:—"The title of first discovery; the title of first occupation; and, in the last place, that which results from a peaceable and uncontested possession of more than half a century."—(British and Foreign State Papers, 1821-22, p. 485.)

The British Commissioners, 1826.

To a similar purport the British Commissioners, Messrs. Huskisson and Addington, in the sixth conference held at London, December 16. 1826, maintained this doctrine:—"Upon the question how far prior discovery constitutes a legal claim to sovereignty, the law of nations is somewhat vague and undefined. It is, however, admitted by

the most approved writers, that mere accidental discovery, unattended by exploration—by formally taking possession in the name of the discoverer's sovereign—by occupation and settlement, more or less permanent—by purchase of the territory, or receiving the sovereignty from the natives—constitutes the lowest degree of title; and that it is only in proportion as first discovery is followed by any or all of these acts, that such title is strengthened and confirmed."

Mr. Gallatin's view.

In accordance with the same view, the plenipotentiary of the United States, Mr. Gallatin, in his counterstatement, which Mr. Greenhow has appended to the second edition of his work, asserts that "Prior discovery gives a right to occupy, provided that occupancy take place within a reasonable time, and is followed by permanent settlements and by the cultivation of the soil."

It thus seems to be universally acknowledged, that discovery, though it gives a right of occupancy, does not found the same perfect and exclusive title which grows out of occupation; and that unless discovery be followed within a reasonable time by some sort of settlement, it will be presumed either to have been originally inoperative, or to have been subsequently abandoned.

Conditions attached to discovery.

It seems likewise to be fully recognised by the law of nations, as based upon principles of natural law, and as gathered from the language of negotiations and conventions, that in order that discovery should constitute an inchoate title to territory, it must have been authorised by the sovereign power, must have been accompanied by some act of taking pos-

session significative of the intention to occupy, and must have been made known to other nations.

Lord Stowell.

"Thus Lord Stowell (in the Fama, 3 Rob. p. 115.) lays it down, that "even in newly discovered countries, *where a title is meant to be established* for the first time, some act of possession is usually done and proclaimed as a *notification of the fact.*"

No second discovery.

There can be no second discovery of a country. In this respect title by discovery differs from title by settlement. A title by a later settlement may be set up against a title by an earlier settlement, even where this has been formed by the first occupant, if the earlier settlement can be shown to have been abandoned.

M. Wolff explains the reason of this very clearly (§ cciii.) :—On dit qu'une chose est abandonnée, si simplement son maître ne veut pas qu'elle soit plus long temps sienne, c'est à dire, que l'acte de sa volonté ne contienne rien de plus que ceci, que la chose ne doit plus être à lui. D'où il paroit, qui celui qui abandonne une chose cesse d'en être le maître, et que par conséquent une chose abandonnée devient une chose qui n'est à personne; mais qu'aussi long temps que le maître n'a pas l'intention d'abandonner sa chose, il en reste le maître."

The same writer observes elsewhere (§ mcxxxix.) L'abandon requis pour l'usucapion, et pour la prescription qui en est la suite, ne se présume pas aussi aisément contre les nations qu'entre les particuliers, à cause d'un long silence."

Progressive discovery.

A title by second discovery cannot, from the nature of the thing, be set up against a title by first discovery. The term *second discovery* itself

involves a contradiction, and where the discovery has been progressive, "further discovery" would seem to be the more correct phrase. A case can certainly be imagined, where a later discovery may be entitled to greater consideration than a prior discovery, namely, where the prior discovery has been kept secret; but in such a case the prior discovery is not a discovery which the law of nations recognises, for it has not been made known, at the time when it took place, to other nations; and the inconvenience which would attend the setting up of claims of discovery long subsequently to the event upon which they are professed to be based, would be so great, that the comity of nations does not admit it. The comity of nations, indeed, in sanctioning title by discovery at all, as distinct from title by occupation, has sought to strengthen rather than to impugn the proprietary right of nations; but no territorial title would be safe from question, if the dormant ashes of alleged discoveries might at any time be raked up.

CHAPTER IX.

TITLE BY SETTLEMENT.

Title by Settlement an imperfect Title.—Presumption of Law in its Favour.—Made perfect by undisturbed Possession.—Wheaton.—Title by Usucaption or Prescription.—Vattel.—Acquiescence a Bar to Conflicting Title of Discovery.—Hudson's Bay Settlements.—Treaty of Utrecht.—The Vicinitas of the Roman Law.—Mid-channel of Rivers.—Contiguity, as between conterminous States, a reciprocal Title.—Negotiations between Spain and the United States of America.—Vattel.—Territorial Limits extended by the Necessity of the Case.—Right of maritime Jurisdiction, how far accessorial to Right of Territory.—Right of Pre-emption.—New Zealand.—North American Indians.—Right of innocent Use.

Title by settlement.

Title by settlement, like title by discovery, is of itself an imperfect title, and its validity will be conditional upon the territory being vacant at the time of the settlement, either as never having been occupied, or as having been abandoned by the previous occupant. In the former case, it resolves itself into title by occupation; in the latter, the consent of the previous occupant is either expressed by some convention, or presumed from the possession remaining undisputed. Title by settlement, however, differs from title by discovery, or title by occupation, in this respect,—that no second discovery, no second occupation can take place, but a series of settlements may have been successively made and in their turn abandoned, so that the last settlement, when confirmed by a certain prescription, may found a good territorial title.

Again, the presumption of law will always be in favour of a title by settlement. "Commodum possidentis in eo est, quod etiamsi ejus res non sit, qui possidet, si modo actor non potuerit suam esse probare, remanet in suo loco possessio; propter quam causam, cum obscura sint utriusque jura contra petitorem judicari solet." (Inst. l. iv. tit. 15. § 4.) Presumption of law.

Where title by settlement is superadded to title by discovery, the law of nations will acknowledge the settlers to have a perfect title; but where title by settlement is opposed to title by discovery, although no convention can be cited in proof of the discovery having been waived, still, a tacit acquiescence on the part of the nation that asserts the discovery, during a reasonable lapse of time since the settlement has taken place, will bar its claim to disturb the settlement. Thus, Mr. Wheaton (pt. ii. ch. iv. § 5.) writes: — "The constant and approved practice of nations shows, that by whatever name it be called, the uninterrupted possession of territory or other property, for a certain length of time, by one state, excludes the claim of every other, in the same manner as by the law of nations, and the municipal of code every civilised nation, a similar possession by an individual excludes the claim of every other person to the article of property in question. This rule is founded upon the supposition, confirmed by constant experience, that every person will naturally seek to enjoy that which belongs to him; and the inference fairly to be drawn from his silence and neglect, of the Tacit acquiescence. Wheaton.

original defect of his title, or his intention to relinquish it."

Undisturbed possession.

Title, then, by settlement, though originally imperfect, may be thus perfected by enjoyment during a reasonable lapse of time, the presumption of law from undisturbed possession being, that there is no prior owner, because there is no claimant,—no better proprietary right, because there is no asserted right. The silence of other parties presumes their acquiescence: and their acquiescence presumes a defect of title on their part, or an abandonment of their title. A title once abandoned, whether tacitly or expressly, cannot be resumed. "Celui qui abandonne une chose cesse d'en être le maître, et par conséquent une chose abandonnée devient une chose qui n'est à personne." (Wolff, cciii.)

Title by usucaption.

Title by settlement, then, as distinguished from title by discovery, when set up as a perfect title, must resolve itself into title by *usucaption* or *prescription*. Wolff defines usucaption to be an acquisition of domain founded on a presumed desertion. Vattel says it is the acquisition of domain founded on a long possession, uninterrupted and undisputed, that is to say, an acquisition solely proved by this possession. *Prescription*, on the other hand, according to the same author, is the exclusion of all pretensions to a right — an exclusion founded on the length of time during which that right has been neglected; or, according to Wolff's definition, it is the loss of an inherent right by virtue of a presumed consent. Vattel, writing in French, and observing that the word usucaption was but little used in that language, made use of the word *prescription* when-

ever there were no particular reasons for employing the other. The same remark may be applied in reference to our own language, and thus this title is generally spoken of as *title by prescription.*

What lapse of time is requisite to found a valid title by prescription has not been definitely settled. The law of nature suggests no rule. Where, however, the claimant cannot allege undoubted ignorance on his part, or on the part of those from whom he derives his right, or cannot justify his silence by lawful and substantial reasons, or has neglected his right for a sufficient number of years as to allow the respective rights of the two parties to become doubtful, the presumption of relinquishment will be established against him, and he will be excluded by ordinary prescription. Lapse of time, in the case equally of nations as of individuals, robs the parties of the means of proof: so that if a *bonâ fide* possession were allowed to be questioned by those who have acquiesced for a long time in its enjoyment by the possessors, length of possession, instead of strengthening, would weaken territorial title. This result would be so generally inconvenient, as to be inadmissible. Title by prescription.

Thus, in regard to the territories of the Hudson's Bay Company, it was alleged in the negotiations preliminary to the Treaty of Utrecht, that the French had acquiesced in the settlement of the Bay of Hudson by the Company incorporated by Charles II. in 1663; since M. Fontenac, the Governor of Canada, in his correspondence with Mr. Baily, who was Governor of the Factories in 1637, never complained, "for several years, of any pre- Hudson's Bay Company.

tended injury done to the French by the said Company's settling a trade and building of forts at the bottom of the bay." (General Collection of Treaties, &c. London, 1710–33, vol. i. p. 446.) The King of England, it is true, in his charter had set forth the title of the British Crown, as founded on discovery: the title by discovery, however, required to be perfected by settlement; and thus, in the negotiations, the subsidiary title by settlement was likewise set up by the British Commissioners, and the acquiescence of the French was alleged, either as a bar to their setting up any conflicting title by discovery, or as establishing the presumption of their having abandoned their asserted rights of discovery.

What amount of *contiguous* territory attaches to a settlement, so as to prevent the titles of two nations from conflicting by virtue of adjoining settlements, seems to be governed by no fixed rule, but must depend on the circumstances of the case.

Vattel. Vattel observes (l. ii. § 95.), "If, at the same time, two or more nations discover and take possession of an island, or *any other desert land without an owner*, they ought to agree between themselves, and make an equitable partition; but, if they cannot agree, each will have the right of empire and the domain in the parts in which they first settled."

Vicinitas. The title of *vicinitas* was recognised in the Roman law, in the case of recent alluvial deposits, as entitling the possessor of the adjoining bank to a claim of property; but, if it were an island formed in the mid-channel, there was a common title to it in the proprietors of the two banks. "Insula nata

in flumine, quod frequenter accidit, si quidem mediam partem fluminis tenet, communis est eorum, qui ab utraque parte fluminis prope ripam prædia possident, pro modo latitudinis cujusque fundi, quæ latitudo prope ripam sit: quod si alteri parti proximior est, eorum est tantum, qui ab ea parte prope ripam prædia possident." (Inst. ii. tit. i. § 22.) So, in the case where a river abandons its former channel, the ancient bed belongs to those "qui prope ripam prædia possident;" and in the Digest (xli. tit. i. l. 7.), we have a case supposed where a river has changed its course, and occupied for a time the entire property (totum agrum) of an individual, and then deserted its new channel: the Roman law did not consider that, strictly speaking, the title of the former proprietor revived, inasmuch as he had no adjoining land. "Cujus tamen *totum agrum* novus alveus occupaverit, licet ad priorem alveum reversum fuerit flumen; non tamen is, cujus is ager fuerat, stricta ratione quicquam in eo alveo habere potest: quia et ille ager, qui fuerat, desiit esse, amissâ propriâ formâ: et quia vicinum prædium nullum habet, non potest *ratione vicinitatis* ullam partem in eo alveo habere."

Mid-channel of rivers.

Again, in the case of a river, the banks of which are possessed by contiguous states, the presumption of law is, that the *Thalweg*, or mid-channel, is the mutual boundary; since rivers are, in the case of conterminous states, *communis juris*, unless acknowledged by them to be otherwise, or prescribed for by one of the parties. "The general presumption," observes Lord Stowell, (in the Twee Gebroeders, 3 Rob. p. 339.), "certainly bears strongly

against such exclusive rights, and the title is matter to be established on the part of those claiming under it, in the same manner as all other demands are to be substantiated, by clear and competent evidence."

Contiguity a reciprocal title.

A title by contiguity, as between conterminous states, would thus appear to be a reciprocal title: it cannot be advanced by one party, excepting as a principle which sanctions a corresponding right in the other. The practice is in accordance with this.

United States of America.

Thus, the United States of America, in its discussions with Spain respecting the western boundary of Louisiana, contended, that "whenever one European nation makes a discovery, and takes possession of any portion of that continent (sc., of America), and another afterwards does the same at some distance from it, where the boundary between them is not determined by the principle above mentioned (sc., actual possession of the sea-coast), the middle distance becomes such of course." (British and Foreign State Papers, 1817–18, p. 328.)

Circumstances however will sometimes create exceptions, as for instance, where the control of a district left unoccupied is necessary for the

Security of a state.

security of a state, and not essential to that of another: in this case the the principle of *vicinitas* would be overruled by higher considerations, as it would interfere with the perfect enjoyment of existing rights of established domain.

Vattel.

Thus Vattel, l. i. § 288. "A nation may appropriate to herself those things of which the free and common use would be prejudicial or dangerous to her. This is a second reason for which govern-

ments extend their dominion over the sea along their coasts, as far as they are able to protect their rights. It is of considerable importance to the safety and welfare of the state that a general liberty be not allowed to all comers to approach so near their possessions, especially with ships of war, as to hinder the approach of trading nations, and molest their navigation." And again, after stating that it was not easy to determine strictly the limits of this right, he goes on to say: "Each state may, on this head, make what regulation it pleases so far as respects the transactions of the citizens with each other, or their concerns with their sovereign, but, between nation and nation, all that can reasonably be said is, that in general, the dominion of the state over the neighbouring sea extends as far as her safety *renders it necessary* and her power is able to assert it; since on the one hand she cannot appropriate to herself a thing that is common to all mankind, such as the sea, except so far as she *has need of it for some lawful end*, and on the other, it would be a vain and ridiculous pretension to claim a right which she were wholly unable to assert." At present, by the general law of nations, the possession of the coast is held to entitle a nation to exclusive jurisdiction over the adjoining seas to the extent of a marine league, as being necessary for the free execution of her own municipal laws, and as being within the limits which she can command by her cannon. On the ground then of her own right of self-preservation, a nation which has made a settlement may possess a per-

Exclusive jurisdiction over seas.

fect right of excluding other nations from settling within a given distance. This right, however, is evidently an accessory of the right of settlement.

A further accessorial right of settlement has, in modern times, been recognised by the practice of civilised nations in both hemispheres, namely, a right of pre-emption from the aboriginal inhabitants in favour of the nation which has actually settled in the country. It is this right which Great Britain asserts against all other civilised nations in respect to New Zealand, and which the United States of America assert against all other civilised nations in respect to the native Indians. The claim involved in it is evidently based upon the principle, that the acquisition of such territory by any other nation would be prejudicial to the full enjoyment of the existing territorial rights of the nation which has made settlement there. Such seems to be the only recognised ground upon which a *perfect right of contiguity* can be set up. The principle of mere vicinity in the case of nations, unless strictly limited, will only result in furnishing a graceful pretext for the encroachments of the strong upon the weak, whenever a powerful state should cast a longing eye upon an adjoining district, and feel a natural inclination to render its own possessions more complete:

Right of pre-emption.

New Zealand.

Vicinity.

> Oh si angulus ille
> Proximus accedat, qui nunc deformat agellum.

Right of innocent use.

The right of *innocent use* seems to have been admitted into the code of international law in order

to obviate the strength of this temptation, but it is only an imperfect right, unlike that of necessity, and all attempts to construct a title upon principles of convenience can result only in imperfect titles, which require the express acknowledgment of other nations to give them validity.

CHAPTER X.

ON DERIVATIVE TITLE.

Title by Conquest.—Title by Convention.—Vattel.—Martens.—Wheaton.—The Practice of Nations.—United States.—Great Britain.—Kent's Commentaries.—Mixed Conventions.—The Fisheries off Newfoundland.—Treaty of Paris.—Distinction between Rights and Liberties.—Permanent Servitude.—Negotiations in 1818.—Mr. Adams' Argument.—Lord Bathurst's Letter.—Mr. Adams' Reply.—Convention of 1818.

DERIVATIVE title may result from involuntary or voluntary cession (*traditio*). Involuntary cession takes place when a nation vanquished in war abandons its territory to the conqueror who has seized it. Voluntary cession, on the other hand, is marked by some compact or convention; its object may be either to prevent a war, or to cement a peace. The repeated occurrence of such voluntary cessions in later times, has led the chief writers on international law to make a distinction accordingly between transitory conventions, which mark such cessions, and treaties properly so called.

Transitory conventions.

Vattel, b. xi. ch. xii. § 153., lays it down that,—

Vattel.

"The compacts which have temporary matters for their object are called agreements, conventions, and pactions. They are accomplished by one single act, and not by repeated acts. These compacts are perfected in their execution once for all; treaties

receive a successive execution, whose duration equals that of the treaty."

Martens, § 58., to the same effect observes,— Martens.

"Les traités de cession, de limites, d'échange, et ceux même qui constituent une servitude de droit public, ont la nature des conventions transitoires; les traités d'amitié, de commerce, de navigation, les alliances égales et inégales, ont celle des traités proprement dits (*fœdera*).

"Les conventions transitoires sont perpetuelles par la nature de la chose." (§ 1.)

Mr. Wheaton, part iii. c. 11., follows in the same line:— Wheaton.

"General compacts between nations may be divided into what are called transitory conventions, and treaties properly so called. The first are perpetual in their nature, so that, being carried into effect, they subsist independent of any change in the sovereignty and form of government of the contracting parties; and although their operation may in some cases be suspended during war, they revive on the return of peace without any express stipulation. Such are treaties of cession, boundary, or exchange of territory, or those which create a permanent servitude in favour of one nation within the territory of another."

If we look to the practice of nations, we find that the tribunals of the United States, equally with those of Great Britain, maintain this doctrine. Thus in the case of The Society for the Propagation of the Gospel in Foreign Parts v. Town of Newhaven, in Wheaton's Reports of Cases adjudged in the Supreme Court of the United States, Feb. 1823, vol. viii. p. 494., Mr. Jus- Practice of nations. United States.

tice Washington, in delivering judgment for the plaintiffs, said, "But we are not inclined to admit the doctrine urged at the bar, that treaties become extinguished, ipso facto, by war between the two governments, unless they should be revived by an express or implied renewal on the return of peace. Whatever may be the latitude of doctrine laid down by elementary writers on the law of nations, dealing in general terms in relation to this subject, we are satisfied that the doctrine contended for is not universally true. There may be treaties of such a nature, as to their object and import, as that war will put an end to them; but where treaties contemplate a permanent arrangement of territorial and other national rights, or which, in their terms, are meant to provide for the event of an intervening war, it would be against every principle of just interpretation to hold them extinguished by the event of the war. If such were the law, even the treaty of 1783, so far as it fixed our limits, and acknowledged our independence, would be gone, and we should have had again to struggle for both upon original revolutionary principles. Such a construction was never asserted, and would be so monstrous as to supersede all reasoning.

"We think, therefore, that treaties stipulating for permanent rights and general arrangements, and professing to aim at perpetuity, and to deal with the case of war as well as of peace, do not cease on the occurrence of war, but are at most only suspended while it lasts; and unless they are waived by the parties, or new and repugnant stipulations are made, they revive in their operation at the return of peace?"

In the case of Sutton v. Sutton, 1 Russell and Mylne, p. 663., which was decided by Sir J. Leach, in the Rolls Court in London, in 1830, a question was raised whether by the ninth article of the treaty of 1794, between Great Britain and the United States, American citizens who held lands in Great Britain on Oct. 28. 1795, and their heirs and assigns, are at all times to be considered, as far as regards those lands, not as aliens, but as native subjects of Great Britain. The 28th article of the treaty declared that the ten first articles should be permanent, but the counsel in support of the objection to the title contended, that "it was impossible to suggest that the treaty was continuing in force in 1813; it necessarily ceased with the commencement of the war. The 37 G. 3. c. 97. could not continue in operation a moment longer without violating the plainest words of the Act. That the word 'permanent' was used, not as synonymous with 'perpetual or everlasting,' but in opposition to a period of time expressly limited." On the other hand, the counsel in support of the title maintained that "the treaty contained articles of two different descriptions; some of them being temporary, others of perpetual obligation. Of those which were temporary, some were to last for a limited period; such as the various regulations concerning trade and navigation; and some were to continue so long as peace subsisted, but being inconsistent with a state of war, would necessarily expire with the commencement of hostilities. There were other stipulations which were to remain in force in all time to come, unaffected by the contingency of

Rolls Court.

peace or war. For instance, there are clauses for fixing the boundaries of the United States. Were the boundaries so fixed to cease to be the boundaries, the moment that hostilities broke out?"

The Master of the Rolls, in his judgment, said, "The privileges of natives being reciprocally given, not only to the actual possessors of lands, but to their heirs and assigns, it is a reasonable construction that it was the intention of the treaty, *that the operation of the treaty should be permanent*, and not depend upon the continuance of a state of peace."

"The Act of the 37 G. 3. c. 95., gives full effect to this article of the treaty in the strongest and clearest terms; and if it be, as I consider it, the true construction of this article, that it was to be permanent, and independent of a state of peace or war, then the act of parliament must be held in the 24th section, to declare this permanency, and when a subsequent section provides that the act is to continue in force, so long only as a state of peace shall subsist, it cannot be construed to be directly repugnant and opposed to the 24th section, but is to be understood as referring to such provisions of the Act only as would in their nature depend upon a state of peace."

Third article.

The third article, however, of the Treaty of 1794, which may be referred to in Martens' Recueil, ii. p. 497., was of a mixed character, as it recognised a right of one kind, and conceded a liberty of another kind.

Right to take fish.

"It is agreed, that the people of the United States shall continue to enjoy, unmolested, the *right* to take fish of every kind on the Grand

Bank, and on other banks of Newfoundland; also, in the Gulf of St. Lawrence and all other places in the sea where the inhabitants of both countries used, at any time heretofore, to fish. And also, that the inhabitants of the United States shall have *liberty* to take fish of every kind on such part of the coast of Newfoundland as British fishermen shall use, (but not to dry or cure the same on that island) and also on the coasts, bays, and creeks of all other of *her Britannic Majesty's dominions* in America; and that the American fishermen shall have *liberty* to dry and cure fish in any of the unsettled bays, harbours, and creeks of Nova Scotia, Magdalen Islands, and Labrador, *so long as the same shall remain unsettled;* but so soon as the same, or either of them, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish *at such settlements* without a previous agreement for that purpose with the inhabitants, proprietors, or possessors of the ground."

Liberty to take fish.

That the grant of this liberty to American fishermen to take fish on portions of the coast of his Britannic Majesty's dominions, and to dry and cure their fish unconditionally on certain districts not yet settled, subject however to conditions when such districts should become settled, was a provision of a distinct character from the recognition of their right to fish in certain seas and gulfs hitherto open to both parties — was to be presumed both from the terms of the provisions being distinct from each other, and from the nature of the things themselves, as the liber-

ties were to be enjoyed within his Britannic Majesty's dominions, the right was to be exercised in the seas and gulfs, over which his Britannic Majesty claimed no exclusive sovereignty.

The principle established by these two cases seems to be this, — that where a convention in its terms contemplates a permanent arrangement of territorial or other national right, the continuance of which would not be inconsistent with a state of war, it will not expire with the commencement of hostilities, though its operation may in certain cases be suspended till the return of peace.

Hence indeed, conventions, by which a right is recognised, are no sooner executed than they are completed and perfected. If they are valid, they have in their own nature a perpetual and irrevocable effect. To use the words of Vattel, "As soon as a right is transferred by a lawful convention, it no longer belongs to the state, that has ceded it: the affair is concluded and terminated."

To the same effect Judge Kent, the Blackstone of the United States, in his Commentaries upon American law, (vol. i. p. 177.), adopts almost word for word the judgment of the Supreme Court: — "Where treaties contemplate a permanent arrangement of national rights, or which by their terms are meant to provide for the event of an intervening war, it would be against every principle of just interpretation to hold them extinguished by the event of war. They revive at peace, unless waived, or new and repugnant stipulations be made."

Discussions, however, and disputes have not unfrequently arisen as to the character of certain conventions, from the circumstance that on occasions where rights have been recognised, liberties or favours have been conceded in other articles of the same agreement. Mixed conventions.

To this effect Martens (§ 58.) observes, "Cette distinction entre les conventions transitoires et les traités serait encore plus importante, si nombre des traités, et nommément les traités de paix, n'étaient pas composés d'articles de l'un et de l'autre genre [mixtes], ce qui met de la difficulté dans l'application des principes énoncés."

A striking illustration of this observation of M. Martens may be found in the discussions which took place between the governments of the United States and Great Britain in respect to the fisheries on the Banks of Newfoundland, after the Treaty of Ghent.

By the first article of the treaty signed at Paris in 1783, between Great Britain and the United States of America, his Britannic Majesty had acknowledged the said United States (fourteen in number as specified) to be free, sovereign, and independent states. Treaty of Paris, in 1783.

This article then contained *the recognition of a right once and for all;* and as the main and principal object of the treaty was the recognition of the independence of the United States, this treaty may justly be classed amongst transitory conventions, which are completed and perfected as soon as executed.

Another question, however, might obviously be raised in case of a war, — whether the words of the article created what Martens designates "une servitude de droit public," and what Mr. Wheaton speaks of a "a permanent servitude in favour of one nation within the territory of another," which from the nature of the thing would be suspended during the war, but would revive on the restoration of peace, or whether they merely conceded a favour, the duration of which would be subject to the continuance of peaceful relations between the two states, so that the obligation would cease with the breaking out of war.

Permanent servitude.

In the negotiations which took place in 1818 between the two governments (British and Foreign State Papers, 1819–20), Mr. Adams, on the part of the United States, contended that the treaty of 1783 was not one of those, "which, by the common understanding and usage of civilised nations, is or can be considered as annulled by a subsequent war between the same parties. To suppose that it is, would imply the inconsistency and absurdity of a sovereign and independent state liable to forfeit its right of sovereignty, by the act of exercising it in a declaration of war. But the very words of the treaty attest, that the sovereignty and independence of the United States were not considered or understood as grants from his Majesty. They were taken and expressed as existing before the treaty was made, and as then only first formally recognised and acknowledged by Great Britain.

Negotiations in 1818.

United States.

"Precisely of the same nature were the rights and liberties in the fisheries to which I now refer. They were in no respect grants from the King of Great Britain to the United States; but the acknowledgment of them, as rights and liberties enjoyed before the separation of the two countries, which it was mutually agreed should continue to be enjoyed under the new relations which were to subsist between them, constituted the essence of the article concerning the fisheries. The very peculiarity of the stipulation is an evidence that it was not, on either side, understood or intended as a grant from one sovereign state to another. Had it been so understood, neither could the United States have claimed, nor would Great Britain have granted gratuitously, any such concession. There was nothing either in the state of things or in the disposition of the parties which could have led to such a stipulation, as on the ground of a grant, without an equivalent by Great Britain."

Lord Bathurst's letter of October 30. 1815, to Mr. Adams, contains a full exposition of the doctrine maintained by Great Britain. It is worthy of perusal in full, but, as its great length precludes its insertion on the present occasion, the passages have been selected which bear most closely on the question. Lord Bathurst.

"The Minister of the United States appears, by his letter, to be well aware that Great Britain has always considered the liberty formerly enjoyed by the United States, of fishing within British limits, and using British territories, as derived from the

third article of the Treaty of 1783, and from that alone; and that the claim of an independent state to occupy and use, at its discretion, any portion of the territory of another, without compensation or corresponding indulgence, cannot rest on any other foundation than conventional stipulation. It is unnecessary to inquire into the motives which might have originally influenced Great Britain in conceding such liberties to the United States; or whether other articles of the treaty wherein these liberties are specified, did, or did not, in fact afford an equivalent for them; because all stipulations profess to be founded on equivalent advantages and mutual convenience. If the United States derived from that treaty privileges from which other independent nations, not admitted by treaty, were excluded, the duration of the privileges must depend on the duration of the instrument by which they were granted; and, if the war abrogated the treaty, it determined the privileges. It has been urged, indeed, on the part of the United States, that the Treaty of 1783 was of a peculiar character; and that, because it contained a recognition of American independence, it could not be abrogated by a subsequent war between the parties. To a position of this novel nature, Great Britain cannot accede. She knows of no exception to the rule, that all treaties are put an end to by a subsequent war between the same parties; she cannot, therefore, consent to give to her diplomatic relations with one state, a different degree of permanency from that on which her connection with all other states depends. Nor can she consider any one

Treaties put an end to by war.

state at liberty to assign to a treaty made with her, such a peculiarity of character as shall make it, as to duration, an exception to all other treaties, in order to found, on a peculiarity thus assumed, an irrevocable title to indulgences, which have all the features of temporary concessions."

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Acknowledgments of title.

"*It is by no means unusual for treaties containing recognitions and acknowledgments of title, in the nature of perpetual obligation, to contain, likewise, grants of privileges liable to revocation.* The Treaty of 1783, like many others, contained provisions of different characters, some in their own nature irrevocable, and others of a temporary nature. If it be thence inferred, that, because some advantages specified in a treaty could not be put an end to by the war, therefore all the other advantages were intended to be equally permanent, it must first be shown that the advantages themselves are of the same, or, at least, of a similar character: for the character of one advantage recognised or conceded by treaty, can have no connection with the character of another, though conceded by the same instrument, unless it arises out of a strict and necessary connection between the advantages themselves. But what necessary connection can there be between a right to independence, and a liberty to fish within British jurisdiction, or to use British territory? Liberties within British limits are as capable of being exercised by a dependent, as an independent state, and cannot therefore be the necessary consequence of independence.

"The independence of a state is that which cannot be correctly said to be granted by a treaty, but to be acknowledged by one. In the Treaty of 1783, the independence of the United States was certainly acknowledged; but it had been before acknowledged, not merely by the consent to make the treaty, but by the previous consent to enter into the provisional articles executed November, 1782. The independence might have been acknowledged, without either the treaty or the provisional articles; but by whatever mode acknowledged, the acknowledgment is, in its own nature, irrevocable. A power of revoking, or even modifying it, would be destructive of the thing itself; and, therefore, all such power is necessarily renounced, when the acknowledgment is made. The war could not put an end to it, for the reason justly assigned by the American Minister, because a nation cannot forfeit its sovereignty by the act of exercising it; and for the further reason that Great Britain, when she declared war on her part against the United States, gave them by that very act a new recognition of their independence.

Irrevocable recognitions.

"The nature of the liberty to fish within British limits, or to use British territory, is essentially different from the right to independence, in all that may reasonably be supposed to regard its intended duration. The grant of this liberty has all the aspect of a policy temporary and experimental, depending upon the use that might be made of it, on the condition of the islands and places where it was to be exercised, and the more general conveniences or inconveniences, in a military, naval, or

Liberty different from right.

commercial point of view, resulting from the access of an independent nation to such islands and places.

"When, therefore, Great Britain, admitting the independence of the United States, denies their rights to the liberties for which they now contend, it is not that she selects from the treaty articles or parts of articles, and says, at her own will, This stipulation is liable to forfeiture by war, and that is irrevocable; but the principle of her reasoning is, that such distinctions arise out of the provisions themselves, and are founded on the very nature of the grants. But the rights acknowledged by the Treaty of 1783 are not only distinguishable from the liberties conceded by the same treaty in the foundation upon which they stand, but they are carefully distinguished in the treaty of 1783 itself.

Distinctions founded on the very nature of the grants.

"The undersigned begs to call the attention of the American minister to the wording of the 1st and 2nd articles, to which he has often referred for the foundation of his arguments. In the 1st article, Great Britain acknowledges an independence already expressly recognised by other powers of Europe, and by herself, in her consent to enter into provisional articles, of Nov. 1782. In the 3rd article Great Britain acknowledges the *right* of the United States to take fish on the banks of Newfoundland, and other places, from which Great Britain had no right to exclude any independent nation. But they are to have the *liberty* to take fish on the coasts of his Majesty's dominions in America, and *liberty* to cure and dry them in certain unsettled places within his Majesty's territory. If these liberties, thus

granted, were to be as perpetual and indefeasible as the rights previously recognised, it is difficult to conceive that the plenipotentiaries of the United States would have admitted a variation of language so adapted to produce a different impression, and above all, that they should have admitted so strange a restriction of a perpetual and indefeasible right, as that with which the article concludes, which leaves a right, so practical and so beneficial as this is admitted to be, dependent on the will of British subjects, in their character of inhabitants, proprietors, or possessors of the soil, to prohibit its exercise altogether.

"It is clearly obvious that the word *right* is, throughout the treaty, used as applicable to what the United States were to enjoy in virtue of a recognized independence, and the word *liberty* to what they were to enjoy, as concessions strictly dependent on the treaty itself."

Mr. Adams' reply.

Mr. Adams, in his reply to Viscount Castlereagh, of Jan. 22. 1816, having explicitly "disavowed every pretence of claiming for the diplomatic relations between the United States and Great Britain a degree of permanency different from that of the same relations between either of the parties and all other powers," goes on to state, "The undersigned believes that there are many exceptions to the rule by which treaties between nations are mutually considered as terminated by the intervention of war; that these exceptions extend to the engagements contracted, with the understanding that they are to operate equally in war and peace, or exclusively during war: to all engagements by which

the parties superadd the sanction of a formal compact to principles dictated by the eternal laws of morality and humanity; and finally to all engagements which, according to the expression of Lord Bathurst's note, are in the nature of a perpetual obligation. To the first and second of these classes may be referred the 10th article of the Treaty of 1794, and all treaties or articles of treaties stipulating the abolition of the slave-trade. The treaty of peace of 1783 belongs to the third."•

Engagements of a perpetual obligation.

"The reasoning of Lord Bathurst's note seems to confine this perpetuity of obligation to recognitions and acknowledgments of title; and to consider its perpetual nature as resulting from the subject-matter of the contract, and not from the engagement of the contractor. Whilst Great Britain leaves the United States unmolested in the enjoyment of all the advantages, rights, and liberties, stipulated in their behalf in the Treaty of 1783, it is immaterial to them whether she founds her conduct upon the mere fact that the United States are in possession of such rights, or whether she is governed by good faith and respect for her own engagements. But if she contests any one of them, it is to her engagements only that the United States can appeal as to the rule for settling the question of right. If this appeal be rejected, it ceases to be a discussion of right, and this observation applies as strongly to the recognition of independence, and to the boundary line, in the Treaty of 1783, as to the fisheries. It is truly observed by Lord Bathurst, that in that treaty the independence of the United States was not granted, but acknowledged. He

Result of subject-matter.

adds, that it might have been acknowledged without any treaty, and that the acknowledgment, in whatever mode made, would have been irrevocable. But the independence of the United States was precisely the question upon which a previous war between them and Great Britain had been waged. Other nations might acknowledge their independence without a treaty, because they had no right, or claim of right, to contest it: but this acknowledgment, to be binding upon Great Britain, could have been made only by treaty, because it included the dissolution of one social compact between the parties, as well as the formation of another. Peace could exist between the two nations only by the mutual pledge of faith to the new social relations established between them, and hence it was that the stipulations of that treaty were in the nature of perpetual obligation, and not liable to be forfeited by a subsequent war, or by any declaration of the will of either party without the assent of the other."

Stipulations of treaty.

Mr. Adams then proceeds to discuss the variation in the employment of the terms *right* and *liberty*, considering the former to import an advantage to be enjoyed in a place of common jurisdiction, the latter to refer to the same advantage, incidentally leading to the borders of a special jurisdiction. That the term *right* was used as applicable to what the United States were to enjoy in virtue of a recognised independence, and the word *liberty* to what they were to enjoy as concessions strictly dependent on the treaty itself, he declined to admit, as a construction altogether unfounded.

He further contended, that "the restriction at

the close of the article was itself a confirmation of the permanency of every part of the article," for that, "upon the common and equitable rule of construction for treaties, the expression of one restriction implies the exclusion of all others not expressed; and thus the very limitation, which looks forward to the time when the unsettled deserts should become inhabited, to modify the enjoyment of the same liberty, conformably to the change of circumstances, corroborates the conclusion that the whole purport of the compact was permanent and not temporary."

The documents from which these extracts have been made will well repay a perusal of them in full, both from the importance of the principles which are therein discussed, and from the ability with which the discussion was conducted on both sides. The result of the negotiations was the conclusion of the convention of October 20. 1818, by which the liberty to take and cure fish on certain parts of the British American coasts, so long as they remained unsettled, was secured to the citizens of the United States, in common with British subjects, "*for ever.*" Convention of 1818.

It appears to have been admitted by both parties to this negotiation, that treaties do sometimes contain acknowledgments in the nature of a perpetual obligation: the point at issue between them seems to have been, whether the provisions of a convention could ever be considered as of a mixed character, some of which would be terminable by war, whilst others were irrevocable; and whether the nature of the thing acknowledged determined the character

of the provision, or the engagement of a treaty gave permanence to the obligation. It seems to have been implied by the insertion of the words "for ever," in the first article of the Convention of 1818, that if the permanent character of the thing recognised is not beyond dispute, the words of the convention must be express, in order to give to the engagements of it the nature of a perpetual obligation. On the other hand, both parties admitted that recognitions of territorial title were of perpetual obligation; they differed as to the grounds: the British commissioner deriving the obligation from the nature of the thing recognised, the plenipotentiary of the United States from the fact of its having been recognised by a convention.

CHAPTER XI.

NEGOTIATION BETWEEN THE UNITED STATES AND GREAT BRITAIN IN 1818.

Treaty of Ghent, 1814.—Negotiations respecting the Restoration of Fort George.—The United States replaced in Possession of the Post at the Mouth of the Columbia River.—General Negotiations in London, in 1818.—Proposal on the Part of the United States.—Convention of 1818.—No exclusive Claim on either Side.—Western Boundary of the United States by the Treaty of 1783.—Treaty of 1794.—Sources of the Mississippi in 47° 38′.—Convention of 1803, respecting the Boundary, not ratified.—President Jefferson's Letter.—Cession of Louisiana to the United States.—Convention of 1806.—First Allusion to the Country west of the Rocky Mountains.—Convention not ratified by the United States. Boundary Line according to Treaty of Utrecht.—Opinion of Mr. Greenhow.—Anderson's History of Commerce.—Treaty of Ryswick.—Limits of Canada, as surrendered to Great Britain.—Difficulty of Boundary Treaties from incorrect Maps.—Treaty of 1783.

Treaty of Ghent.

THE Treaty of Ghent, between Great Britain and the United States of America, was signed on the 24th of December 1814, and it was agreed in the first article, "that all territory, places, and possessions whatsoever taken by either party from the other during the war, or which may be taken after the signing of this treaty, excepting only the islands hereinafter mentioned [in the bay of Passamaquoddy], shall be restored without delay." By virtue of this article, Mr. Monroe, the Secretary of State at Washington, wrote to Mr. Baker, the British chargé-d'affaires, on July 18. 1815, to inform

him that measures would be taken by the United States to occupy without delay the post on the Columbia river, which a British expedition had succeeded in taking possession of during the war, as not being within the exception stipulated. (British and Foreign State Papers, 1821–22, p. 459.) To this communication an indecisive reply was made by Mr. Baker, and the affair was allowed to rest till 1817, when it appears that the United States despatched the Ontario sloop of war to resume possession of this post, without giving previous notice to Mr. Bagot, the British minister at Washington. This led to an inquiry on the part of Mr. Bagot, relative to the destination of the Ontario, and the object of her voyage, and to a statement from him, that "the post in question had not been captured during the late war, but that the Americans had retired from it under an agreement made with the North-west Company, who had purchased their effects, and who had, ever since, retained peaceable possession of the coast." He further observed, that no claim for the restitution of this post could be grounded upon the first article of the Treaty of Ghent, and that "the territory itself was early taken possession of in his Majesty's name, and has been since considered as forming a part of his Majesty's dominions."

Negotiations in London.

The discussion was soon afterwards transferred to London, when, in February 1818, Lord Castlereagh intimated his regret that no notice of the expedition of the Ontario should have been given to the British minister at Washington, Great Britain having a claim of dominion over the territory in

question. It was the desire, however, he said, of the British Government, that the claim of title to this post should go before commissioners for arbitration. Mr. Rush, the Minister of the United States, was authorised to state that the omission to give notice of the Ontario's departure to Mr. Bagot, was entirely owing to the accident of the President being absent from the seat of government, but that it had been concluded from Mr. Baker's communications that no authorised English establishment existed at the place, and "as they intimated no question whatever of the title of the United States to the settlement, which existed there before the late war, it did not occur that any such question had since arisen, which could make it an object of interest to Great Britain."

Pretensions of the United States.

Mr. Adams, in the course of his subsequent instructions to Mr. Rush, in his letter of May 20. 1818, sets forth very clearly and fully the pretensions of the United States. "As it was not anticipated that any disposition existed in the British government to start questions of title with us on the borders of the South Sea, we could have no possible motive for reserve or concealment with regard to the expedition of the Ontario. In suggesting these ideas to Lord Castlereagh, rather in conversation than in any formal manner, it may be proper to remark the minuteness of the present interests, either to Great Britain or to the United States, involved in this concern; and the unwillingness, for that reason, of this Government, to include it among the objects of serious discussion with them. At the same time you might give him to

understand, though not unless in a manner to avoid every thing offensive in the suggestion, that from the nature of things, if in the course of future events it should ever become an object of serious importance to the United States, it can scarcely be supposed that Great Britain would find it useful or advisable to resist their claim to possession by systematic opposition. If the United States leave her in undisturbed enjoyment of all her holds upon Europe, Asia, and Africa, with all her actual possessions in this hemisphere, we may very fairly expect, that she will not think it inconsistent with a very wise or friendly policy, to watch with eyes of jealousy and alarm every possibility of extension to our natural dominion in North America, which she can have no solid interest to prevent, until all possibility of her preventing it shall have vanished." (State Papers, 1821–22, p. 464.)

Lord Castlereagh in the mean time had admitted to Mr. Rush, that in accordance with the principle of *statu quo*, which was the basis of the Treaty of Ghent, the United States had a right to be reinstated *and to be the party in possession whilst treating of the title.* In accordance with this view, orders were transmitted to the agents of the North-west Company at Fort George, and to the commodore of the British naval forces in the Pacific, expressly in conformity to the first article of the Treaty of Ghent, to restore to the government of the United States, through its agent, Mr. Prevost, the settlement of Fort George on the Columbia river. A formal surrender of the post was, in consequence, made and accepted on the 6th of

Fort George restored to the United States.

October 1818; but the North-west Company were still allowed to occupy it under the flag of the United States, pending the final decision of the right of sovereignty between the respective governments.

Great Britain, in admitting the right of the United States to be the party in possession of Fort George pending the discussion of the title to it, attached the most liberal interpretation to the Treaty of Ghent, and certainly gave to the United States, in all future discussions, the advantage of the presumption of law, on the ground of possession, as against Great Britain: — "Commodum possidentis in eo est, quod etiamsi ejus res non sit, qui possidet, si modo actor non potuerit suam esse probare, remanet in suo loco possessio." But, beyond this, nothing was conceded. Doubtless, in order to oust the United States, it would now be necessary for Great Britain to make out a perfect and exclusive title, which she does not attempt to set up, but the re-occupation of the post by the officers of the United States, expressly in conformity to the Treaty of Ghent, established nothing further than the fact that they were in the possession of it before the war broke out. Presumption of law.

In the mean time negotiations were being carried on in London for the settlement of various points at issue between the two governments — including the fisheries; the boundary line from the Lake of the Woods westwards; the settlement at the Columbia river; the indemnification for slaves carried off from the United States; and the renewal of a treaty of commerce. It would appear from a letter ad- Negotiations in London.

dressed by Messrs. Gallatin and Rush to Mr. Adams, on October 20. 1818, that in the course of the above negotiations the British commissioners were altogether unwilling to agree to a boundary line, unless some arrangement was made with respect to the country westward of the Stony Mountains.

Proposal of the United States.

"This induced us to propose an extension of the boundary line (as drawn along the 49th degree of north latitude, from the Lake of the Woods to the Stony Mountains), due west to the Pacific Ocean. *We did not assert that the United States had a perfect right to that country, but insisted that their claim was at least good against Great Britain.* The 49th degree of north latitude had, in pursuance of the Treaty of Utrecht, been fixed indefinitely as the line between the northern British possessions and those of France, including Louisiana, now a part of our territories. There was no reason why, if the two countries extended their claims westward, the same line should not be continued to the Pacific Ocean. So far as discovery gave a claim, ours to the whole country on the waters of the Columbia River, was indisputable. It had derived its name from that of the American ship, commanded by Captain Gray, who had first discovered and entered its mouth. It was first explored from its sources to the ocean by Lewis and Clarke, and before the British traders from Canada had reached any of its waters; for it was now ascertained that the river Tacoutche-Tesse, discovered by Mackenzie, and which he had mistaken for the Columbia, was not a branch of that river, but fell into the sound called 'the Gulf of Georgia.' The settlement at the place

called Astoria, was also the first permanent establishment made in that quarter. The British plenipotentiaries asserted that former voyages, and principally that of Captain Cook, gave to Great Britain the rights derived from discovery, and they alluded to purchases from the natives south of the River Columbia, which they alleged to have been made prior to the American Revolution. They did not make any formal proposition for a boundary, but intimated that the river itself was the most convenient that could be adopted, and that they would not agree to any that did not give them the harbour at the mouth of the river, in common with the United States." (State Papers, 1819–20, p. 169.)

Convention of 1818.

These negotiations were brought to a close by the Convention of October 20. 1818, in which, however, nothing definitive was concluded in regard to the settlement on the Columbia river. By the third article it is agreed, that any such country as may be claimed by either party on the north-west coast of America, on the continent of America westward of the Stony Mountains, shall, together with its harbours, bays, and creeks, and the navigation of all rivers within the same, be free and open, for the term of ten years from the date and signature of this treaty, to the vessels, citizens, and subjects of the two Powers; it being well understood that this agreement is not to be construed to the prejudice of any claim which either of the two high contracting parties may have to any part of the last-mentioned country, nor shall it be taken to affect the claims of any other Power or State to any part of the said country —the only object of the two high

contracting parties in that respect being to prevent disputes and differences amongst themselves." (Martens' Nouveau Recueil de Traités, iv. p. 575.)

No exclusive claims.

Thus much, however, may be considered to have been definitively recognised by the article just cited, that both parties had claims to territory west of the Stony Mountains, but not exclusive claims; it being implied, by the provision that the agreement should not be taken to affect the claims of any other Power or State to any part of the said country, that other Powers might likewise have claims.

Treaty of 1783.

By the previous article of this treaty, the object of the framers of the second article of the Treaty of 1783 was at last accomplished. By that article it had been agreed, that the western boundary of the United States should be defined by a line "drawn from the most north-western point of the Lake of the Woods on a due west course to the River Mississippi; thence by a line to be drawn along the middle of the said River Mississippi, until it shall intersect the northernmost part of the thirty-first degree of north latitude." At the time, then, when Gray crossed the bar of the Columbia river in 1792, and first entered the estuary of that river, there was no question about any title of the United States to territories west of the River Mississippi. The boundaries were the Atlantic Ocean on the east, and the River Mississippi on the west.

The framers, however, of the second article of the Treaty of 1783, were ignorant of the true position of the sources of the Mississippi. It was in consequence stipulated by the fourth article of the subsequent Treaty of 1794, that a "joint survey of

Treaty of 1794.

the river from one degree below the falls of St. Anthony, to the principal source or sources of the said river, and of the parts adjacent thereto," should be made; and if, on the result of the survey, it should appear that the river could not be intersected by the above-mentioned line, the parties were to regulate the boundary line by amicable negotiation, according to justice and mutual convenience, and in conformity to the intent of the Treaty of 1783. This joint survey never took effect. In 1798, however, Mr. Thomson, the astronomer of the North-west Company, determined the latitude of the sources of the Mississippi to be in 47° 38′, and thus it was definitively ascertained, that no line could be drawn due west from the north-western point of the Lake of the Woods, which is in latitude 49° 37′, so as to meet the head-waters of the Mississippi. In consequence, by a convention signed on the 12th of May 1803, by Mr. Rufus King and Lord Hawkesbury, it was agreed that the boundary should be a line from the north-west corner of the Lake of the Woods by the shortest line, till it touched the River Mississippi (British and Foreign State Papers, 1819–20, p. 158.) It is to this treaty that President Jefferson alludes in his letter of August 1803, referred to by Mr. Pakenham, in his letter of September 12. 1844:—

Sources of the Mississippi.

Convention of 1803.

President Jefferson's letter.

"The boundaries (of Louisiana), which I deem not admitting question, are the high lands on the western side of the Mississippi, enclosing all its waters (the Missouri of course), and terminating in the line drawn from the north-west point of the Lake of the Woods to the nearest source of the

Mississippi, *as lately settled* between Great Britain and the United States." This treaty, however, was never ratified, most probably in consequence of the cession of Louisiana to the United States, by the treaty signed at Paris on the 30th of April 1803; as this cession gave to the United States the title which France had re-acquired from Spain, by the treaty of St. Ildefonso in 1800, to the western bank of the Mississippi. In consequence, we find that in a convention concluded at London between Messrs. Monroe and Pinckney, and the Lords Holland and Auckland, in 1806, it was agreed by the fifth article, "that a line drawn due north or south (as the case may require), from the most north-western point of the Lake of the Woods, until it shall intersect the 49th parallel of north latitude, and from the point of such intersection due west, along and with the said parallel, shall be the dividing line between his Majesty's territories and those of the United States, to the westward of the said lake, as far as their said respective territories extend in that quarter; and that the said line shall, to that extent, form the southern boundaries of his Majesty's said territories, and the northern boundary of the said territories of the United States; provided that nothing in the present article shall be construed to extend to the north-west coast of America or to the territories belonging to or claimed by either party on the continent of America to the westward of the Stony Mountains." (Martens' Recueil des Traités, viii. p. 594.)

Cession of Louisiana.

Convention of 1806.

This was the first notice of any claim on the part of the United States to territory west of the Rocky

Territory west of the Rocky Mountains.

Mountains: it may be presumed that the acquisition of the western bank of the Mississippi formed the ostensible basis of her claim, as on that ground the expedition of Lewis and Clarke had been despatched in the preceding year to follow up the Missouri to its source, and thence to trace down to the Pacific Ocean the most direct and practicable water-communication for the purposes of commerce. It may be observed, that the arrangement contemplated by this fifth article was highly favourable to the United States, as their acquired title to Louisiana would not strictly have entitled them to any territory north of the Mississippi. This convention, however, was never ratified by the United States, on account of the absence of any provisions to restrain the impressment of British sailors serving on board of American ships. (Schoell, Histoire des Traités de Paix, ch. 40.)

Mr. Greenhow (p. 281.), in alluding to the negotiations antecedent to this convention, states that Mr. Monroe, on the part of the United States, proposed to Lord Harrowby the 49th parallel of latitude, upon the grounds that this parallel had been adopted and definitively settled, by commissaries appointed agreeably to the tenth article of the treaty concluded at Utrecht in 1713, as the dividing line between the French possessions of Western Canada and Louisiana on the south, and the British territories of Hudson's Bay on the north; and that this treaty, having been specially confirmed in the Treaty of 1763, by which Canada and the part of Louisiana east of the Mississippi and Iberville were ceded to Great Britain, the remainder

Treaty of Utrecht.

of Louisiana continued as before, bounded on the north by the 49th parallel." The same fact was alleged by the commissioners of the United States, in their negotiations with Spain in 1805, respecting the western boundary of Louisiana. (British and Foreign State Papers, 1817–18, p. 322.)

He further goes on to state, that there is every reason to believe, that though commissioners were appointed, in accordance with the treaty, for the purpose of determining the boundaries between the French and British possessions, they never executed their task, and that no line was ever definitely adopted by the two Governments.

Opinion of Mr. Greenhow.

This opinion of Mr. Greenhow seems to be fully supported by the proofs and illustrations annexed in his Appendix, but his mode of stating the substance of the tenth article of the Treaty of Utrecht is calculated to mislead his readers into supposing, that the northern boundary of Louisiana was under discussion when that article was signed. On the contrary, the words of the article were as follows:—"But it is agreed on both sides, to determine within a year, by commissaries to be forthwith named by each party, the limits which are to be fixed between the said bay of Hudson and *the places appertaining to the French;* which limits both the British and French subjects shall be wholly forbid to pass over, or thereby to go to each other by sea or by land. The same commissaries shall also have orders to describe and settle in like manner the boundaries between the *other* British and French colonies in those parts."

Anderson,

On this article Mr. Anderson, in his History of

Commerce, published in 1801, vol. iii. p. 50., observes, under the events of the year 1713:—"Although the French King yielded to the Queen of Great Britain, to be possessed by her in full right for ever, the Bay and Straits of Hudson, and all parts thereof, and within the same, then possessed by France; yet the leaving the *boundaries between Hudson's Bay and the north parts of Canada, belonging to France*, to be determined by commissaries within a year, was, in effect, the same thing as giving up the point altogether, it being well known to all Europe, that France never permits her commissaries to determine matters referred to such, unless it can be done with great advantage to her. *Those boundaries* therefore *have never yet been settled*, although both British and French subjects are by that article expressly debarred from passing over the same, or merely to go to each other by sea or land." History of Commerce.

The object of the tenth article of the Treaty of Utrecht was to secure to the Hudson's Bay Company the restoration of the forts and other possessions of which they had been deprived at various times by French expeditions from Canada, and of which some had been yielded to France by the seventh article of the Treaty of Ryswick. By this latter treaty Louis XIV. had at last recognised William III. as King of Great Britain and Ireland, and William in return had consented that the principle of *uti possidetis* should be the basis of the negotiations between the two crowns. By the tenth article, however, of the Treaty of Utrecht, the French King agreed to restore to the Queen Treaty of Ryswick.

(Anne) of Great Britain, "to be possessed in full right for ever, the Bay and Straits of Hudson, together with all lands, seas, sea coasts, rivers and places situate in the said bay and straits, and which belong thereto, no tracts of land or sea being excepted, which are at present possessed by the subjects of France." The only question therefore for commissaries to settle, were the limits of the Bay and Straits of Hudson, *coastwards*, on the side of the French province of Canada, as all the country drained by streams entering into the Bay and Straits of Hudson were by the terms of the treaty recognised to be part of the possessions of Great Britain.

Hudson's Bay boundaries.

If the coast boundary, therefore, was once understood by the parties, the head waters of the streams that empty themselves into the Bay and Straits of Hudson, indicate the line which at once satisfied the other conditions of the treaty. Such a line, if commenced at the eastern extremity of the Straits of Hudson, would have swept along, through the sources of the streams flowing into the Lake Mistassinnie and Abbitibis, the Rainy Lake, in 48° 30′, which empties itself by the Rainy River into the Lake of the Woods, the Red Lake, and Lake Travers. This last lake would have been the extreme southern limit, in about 45° 40′, whence the line would have wound upward to the north-west, pursuing a serpentine course, and resting with its extremity upon the Rocky Mountains, at the southernmost source of the Saskatchawan River, in about the 48th parallel of latitude. Such would have been the boundary line between

the French possessions and the Hudson's Bay district; and so we find that, in the limits of Canada, assigned by the Marquis de Vaudreuil himself, when he surrendered the province to Sir J. Amherst, the Red Lake is the apex of the province of Canada, or the point of departure from which, on the one side, the line is drawn to Lake Superior; on the other "follows a serpentine course southward to the river Oubache, or Wabash, and along it to the junction with the Ohio." This fact was insisted upon by the British Government in their answer to the ultimatum of France, sent in on the 1st of September, 1761; and the map, which was presented on that occasion by Mr. Stanley, the British minister, embodying those limits, was assented to in the French Memorial of the 9th of September. (Historical Memorial of the Negotiations of France and England from March 26th to Sept. 20th, 1761. Published at Paris, by authority.) By the fourth article, however, of the Treaty of 1763, Canada was ceded in full, with its dependencies, *including the Illinois;* and the future line of demarcation between the territories of their Britannic and Christian Majesties, on the continent of America, was, by the seventh article, irrevocably fixed to be drawn through the middle of the River Mississippi, *from its source* to the river Iberville, and thence along the middle of the latter river and the Lakes Maurepas and Pontchartrain to the sea. Thenceforward the French territory in North America was confined to the western bank of the Mississippi, and this was *the Louisiana* which was ceded by France to Spain in 1769, by virtue of the

Limits of Canada.

treaty secretly concluded in 1762, but not promulgated till 1765. There would have been no mistake as to the boundaries of Louisiana, Canada, and the Hudson's Bay territories, as long as they were defined to be the aggregate of the valleys watered by the rivers flowing into the Gulf of Mexico, the Gulf of St. Lawrence, and the Bay of Hudson respectively. The difficulty in executing the provisions of boundary treaties in America, has arisen chiefly from adopting the data which incorrect maps have furnished, to which there has been nothing in nature corresponding, and from agreeing to contain parallels of latitude, as appearing from those maps to form good natural frontiers, but which have been found upon actual survey to frustrate the intentions of both parties.

Difficulty of boundary treaties.

The relative positions of the Lake of the Woods, the Red Lake, and the northernmost source of the Mississippi, were evidently not understood by the parties to the 2d article of the Treaty of 1783, when it was proposed to continue a line from the northwestern point of Lake Superior through the Long Lake, and thence to the Lake of the Woods, and due west to the Mississippi. In order to hit off the sources of the Mississippi, which was the undoubted purport of the treaty, the line should have been drawn from the westernmost point of Lake Superior up the river St. Louis, and thence it might have been carried due westward to the source of the Mississippi in 47° 38′. No definite substitute was proposed in the Treaty of 1794, which admitted the uncertain character of the proposed frontier; for even then the country had not been surveyed, and

Treaty of 1783.

as neither of the conventions of 1803 or 1806 was ratified by the United States, nor could the respective plenipotentiaries come to any agreement on the subject at the negotiation of the Peace of Ghent, the question remained unsettled, until it was at last arranged by the provisions of the 2d article of the Convention of 1818, that the boundary line agreed upon in 1806 should be the frontier westward as far as the Rocky Mountains.

If this view be correct of the boundary line of the Hudson's Bay territory, as settled by the Treaty of Utrecht, and of the western limit of Canada, as expressed upon its surrender to Great Britain, it will be conclusive against the opinion that the French possessions ever extended indefinitely northwestward along the continent of North America.

It should be kept in mind, that the Treaty of Utrecht was signed in the interval between the grant to Crozat in 1712 and the charter of Law's Mississippi Company in 1717. By the former grant Louisiana had been definitely limited to the head-waters of the Mississippi and the Missouri, and before the subsequent annexation of the Illinois to the province of Louisiana in 1717, all the territory watered by the streams emptying themselves into the Bay of Hudson had been acknowledged by France to be part of the possessions of the Crown of England. As then the Hudson's Bay territories were implied by that treaty to extend up to the Red Lake and Lake Travers, this would definitively bar the French title further north; but the declaration of the French authorities themselves, on the surrender of Canada, that its boundary

rested upon the Red Lake, will still more decisively negative the assertion that Louisiana, after 1717, extended "to the most northern limit of the French possessions in North America, and thereby west of Canada and New France," unless it can be shown that the Illinois country extended to the west of the Red Lake, which was not the fact. This question, however, will be more fully discussed in the next chapter.

CHAPTER XII.

ON THE LIMITS OF LOUISIANA.

Hernando de Soto discovers the Mississippi, in 1542.—British Discoveries in 1654 and 1670.—French Expeditions.—De la Salle, in 1682.—Settlement in the Bay of St. Bernard, in 1685.—D'Iberville, in 1698.—Charter of Louis XIV. to Crozat, in 1712.—The Illinois annexed, in 1717, in the Grant to Law's Mississippi Company.—The Treaty of Paris, in 1763.—Secret Treaty between France and Spain.—Louisiana ceded to Spain, in 1769.—Retroceded to France, in 1800, by the secret Treaty of San Ildefonso,—Transferred by Purchase to the United States, in 1803.—Discussions with Spain as to Boundaries of Louisiana.—Grants by Charter only valid against other Nations upon Principles recognised by the Law of Nations.—Western Boundaries of Louisiana.—Evidence of Charters against the Grantors.—Conflict of Titles between France and England on the Ohio, between France and Spain on the Missouri.—Title of Great Britain by Treaties.—Extent of New France westwardly.—Escarbot's Histoire de la Nouvelle France.—Map of 1757.—Jefferys' History of the French Dominions in America.—Questionable Authority of Maps.

Hernando de Soto.

THE Spaniards are entitled to claim for their countryman Hernando de Soto and his followers the merit of having first discovered the River Mississippi. About the same time that Vasquez de Coronado was despatched to explore the district which is supposed to correspond to the modern province of Sonora, in search of the great city of Cibola and the rich country of Quivira, the Viceroy Mendoza granted a commission to Soto for the discovery of Florida, which at that

time was the general name for the countries on the northern shores of the Gulf of Mexico. According to the Spanish accounts, Soto and his followers succeeded, in 1542, in marching across the continent from Apalache, to the great river (Mississippi), and thence penetrated as far west as the Rio Negro. Soto himself, however, died at Guachoya, and his companions, having committed the body of their leader in a hollow tree to the river, descended the Mississippi in boats, and after a series of conflicts with the natives, succeeded in reaching the Mexican Gulf, under the guidance of Luis de Moscoso and Juan de Añasco. Thence they continued their voyage westward along the coast until they arrived at Panuco, which was the northernmost point of New Spain, being within a few miles of the sea, a little higher up the river than the modern Tampico. (Herrera, Decade iv., ch. vii. and x., British and Foreign State Papers, 1817–18, p. 427.)

The Spaniards, however, do not appear to have availed themselves of this discovery of the mouth of the Mississippi for the purpose of settlement. On the other hand, the northern branches of the river appear to have been first explored by subjects of other powers than Spain, in the latter portion of the seventeenth century. Mr. Greenhow (p. 277.) has inserted an extract from Jefferys' History of the French Dominions in America, published in 1754, to the effect that "the Mississippi, the chief of all the rivers of Louisiana, which it divides almost into two equal parts, was discovered by Colonel Wood, who spent almost ten

British discoveries.

years, or from 1654 to 1664, in searching its course, as also by Captain Bolt, in 1670." No further particulars are given by Jefferys, but it may observed that both the above persons were British subjects.

French expeditions.

In the year 1678, the French Government determined upon an expedition to explore the western parts of New France, and to discover, if possible, a road to penetrate to the Spanish possessions in Mexico. In consequence, Louis XIV. issued letters patent to the Sieur de la Salle, to authorise him to execute this enterprise, which he commenced towards the end of the following year. It was not, however, till February 1682, that he reached the River Colbert or Mississippi, by following the course of the Illinois River. His voyage down the Mississippi was accomplished by the 7th of April following, and on the 9th, La Salle took formal possession, in the name of the French monarch, "of the country of Louisiana, from the mouth of the great river St. Louis, otherwise called Ohio, on the eastern side, and also above the River Colbert or Mississippi, and the rivers which discharge themselves into it, from its source in the country of the Kious or Nadiouessious, as far as its mouth at the sea, or Gulf of Mexico;" and "upon the assurance which they had received from all the natives through whose country they had passed, that they were the first Europeans who had descended or ascended the said river Colbert, they hereby protested against all those who may in future undertake to invade any or all of these countries, people,

De la Salle.

or lands above described, to the prejudice of the right of his Majesty, acquired by the consent of the nations herein named."

The procès-verbal drawn up on this occasion, of which the above is an extract, which is preserved in the archives of the Department of the Marine at Paris, was first published by Mr. Jared Sparks of Boston, the well-known author of the Life of Washington, and may be found most readily in Mr. Falconer's able treatise on the discovery of the Mississippi. La Salle, on his return to France, obtained authority to form a colony near the mouth of the Mississippi, but in his voyage outwards he miscalculated his course, and reached the coast far to the westward of that river. Here indeed, in 1685, he established a settlement in the Bay of St. Bernard, called by him the Bay of St. Louis, which is supposed by some to have been Matagorda Bay, by others to have been the Bay of Espiritu Santo. This colony met with great disasters; but the French Government did not abandon its object, and in 1698 we find that the illustrious Canadian d'Iberville entered the Mississippi, and established a settlement at about one hundred leagues from its mouth. Before 1710, many French settlements had been made on the banks of the great river, but it was not until 1712 that a royal charter was granted by the French King to Antoine Crozat, which is the earliest document relied upon to establish the limits of Louisiana, and which Mr. Greenhow has inserted his work (p. 277.)

Settlement in the Bay of St. Bernard.

D'Iberville

Antoine Crozat.

"Nous avons par ces présentes, signés de notre

main, établi, et établissons ledit Sieur Crozat, pour faire seul le commerce dans toutes les terres par nous possédées, et bornées par le Nouveau Mexique, et par celles des Anglais de la Caroline, tous les établissemens, forts, havres, rivières, et principalement le port et havre de l'isle Dauphine, appellée autrefois de Massacre, le fleuve St. Louis, autrefois appellée Mississippy, depuis le bord de la mer jusqu'aux Illinois, ensemble les rivières St. Philippe, autrefois appellée des Missourys, et St. Hierosme, autrefois appellée Ouabache, avec tous les pays, contrées, lacs dans les terres, et les rivières qui tombent directement ou indirectement dans cette partie du fleuve St. Louis. Voulons que les dites terres, contrées, fleuves, rivières et isles, soient et demeurent compris sous le nom du gouvernement de la Louisiane, qui sera dependant du gouvernement général de la Nouvelle France, auquel il demeurera subordonné; et voulons en outre que *toutes les terres que nous possédons, depuis les Illinois, soient réunis*, en tant que besoin est, *au gouvernement général de la Nouvelle France*, et en fassent partie: nous reservant néanmoins d'augmenter, si nous le jugeons à-propos, l'étendue du gouvernement du *dit pays de Louisiane.*"

Louisiana, it will be thus seen, according to this authoritative document of the French crown, was the country watered by the Mississippi, and its tributary streams from the sea-shore to the Illinois: such was the limitation affixed to the province by the French themselves; and, by the same public instrument, all the rest of the French possessions

were united under the government of New France. It is true that the Illinois was subsequently annexed to Louisiana by a royal decree in 1717, after Crozat had relinquished his charter, and the whole region was granted to Law's Mississippi Company; but the Illinois were still spoken of as the Illinois, and the district was not merged in Louisiana, though it was annexed to that province, to give the company access to Canada, in which the monopoly of the beaver-trade had been granted to them. It has been already observed, that the limits of the Hudson's Bay territories and French Canada were settled by the peace of Utrecht, in 1713: one great object of that treaty was to provide against the commercial disputes of the subjects of the two crowns, which had led to a series of conflicts on the shores of Hudson's Bay; it was in furtherance of this object that the fur-trade of Canada was now diverted from the St. Lawrence to the Mississippi, by this grant of the monopoly of the beaver-trade to the Compagnie d'Occident, and the annexation of the Illinois country to Louisiana.

Law's Mississippi Company.

Upon the surrender of Canada to the British arms, considerable discussion arose as to the respective limits of the provinces of Canada and Louisiana. The British Government insisted, as already stated, p. 211., on a line which would take in the river Ouabache, as far as its junction with the Ohio; and from thence along the Ohio to the Mississippi, the country to the south of the Ohio being at this time either British possessions, as part of Virginia, or occupied by Indian tribes. In the course of these negotiations, the Marquis de

Vaudreuil, who signed the surrender, published his own account of what passed between Sir J. Amherst and himself, of which he considered the English account to be incorrect. "On the officer showing me a map which he had in his hand, I told him the limits were not just, and verbally mentioned others, extending Louisiana on one side to the carrying-place of the Miamis, *which is the height of the lands whose rivers run into the Ouabache;* and on the other to *the head of the river of the Illinois.*" (Annual Register, 1761, p. 268.) Even thus, then, all to the north of the Illinois was admitted to be Canada. However, the French Government, in its memorial of the 9th September, 1761, "agreed to cede Canada in the most ample manner, and to admit the line on which England rested her demand, as, without doubt, the most extensive bound which can be given to the cession." In accordance with this we find that, by the seventh article of the Treaty of Paris, the French possessions were declared to be thenceforth limited by the mid-channel of the Mississippi, from its source to the River Iberville. Treaty of Paris.

The Treaty of Paris, however, has not furnished the only occasion upon which intricate discussions have arisen respecting the limits of Louisiana. By a secret treaty with Spain, made in 1762, but not signed till 1764, France ceded to her all the country known under the name of Louisiana. This transfer, however, was not promulgated till 1765, two years after the Treaty of Paris had been signed by France, Spain, and Great Britain; nor did the Spaniards obtain possession of the country till Secret treaty between France and Spain.

1769. From that time Spain retained it till 1800, when she retroceded it to France by the secret Treaty of San Ildefonso, in exchange for an augmentation of the territories of the Duke of Parma in Italy. France, having thus been reinstated in possession of her ancient province, found she had unexpectedly given alarm and umbrage to the United States of America, and, in order to detach them from their disposition to unite with Great Britain, ceded it in full to the United States, in 1803, for the sum of sixty thousand francs. This led to a protracted negotiation between the United States and Spain, as to the limits of Louisiana, on the side both of Florida and Mexico respectively; which, though commenced in 1805, was not concluded till 1818. The claims of the two states are discussed in full, in a correspondence which may be found in the British and Foreign State Papers for 1817–18, and 1819–20.

Treaty of San Ildefonso.

Louisiana purchased by the United States.

The United States, in the course of these discussions, insisted upon the limits marked out in the letters patent which Louis XIV. had granted to Crozat, *on the authority of the discovery made, and of the possession taken*, by Father Hennepin in 1680, and by La Salle in 1682. Thus the validity of the title conveyed by the letters patent was sought to be grounded by the United States upon principles recognised by the law of nations. Charters, by their own intrinsic force, can only bind those who are subject to the authority from which they emanate: against the subjects of other states they can only avail on the supposition that the title of the grantor is valid by the law of nations. Thus the

Discussions between Spain and the United States.

charter given by Charles II. to the Hudson's Bay Company, granted to them, *by virtue of the discoveries* made in those parts, all the lands, &c. within the entrance of the straits commonly called Hudson's Straits, "which *are not now actually possessed* by any of our subjects, or *by the subjects of any other Christian Prince or State;*" and thus we find in the negotiations antecedent to the Treaty of Utrecht, it was expressly urged in support of the British title to the territories of Hudson's Bay, "that Mons. Frontenac, then Governor of Canada, did not complain of any pretended injury done to France by the said Company's settling a trade and building of forts at the bottom of Hudson's Bay, nor made pretensions to any right of France to that bay, till long after that time." (Anderson's History of Commerce, A. D. 1670, vol. ii. p. 516.) In other words, the title which this charter created was good against other subjects of the British Crown, by virtue of the charter itself; but its validity against other nations rested on the principle that the country was discovered by British subjects, and, at the time of their settlement, was not occupied by the subjects of any other Christian prince or state; and in respect to any special claim on the part of France, the non-interference of the French governor was successfully urged against that Power as conclusive of her acquiescence.

Charters only valid against other nations on principles of international law.

That the province of Louisiana did not at any time extend *further north* than the source of the Mississippi, either if we regard the evidence of public instruments in the form of charters and treaties,

or of historical facts, is most assuredly beyond the reach of argument. What, however, were the *western* limits of the province, has not been so authoritatively determined. Mr. Greenhow (p. 283.), after examining this question, concludes thus:—

"In the absence of more direct light on the subject from history, we are forced to regard the boundaries indicated by nature—namely, the highlands separating the waters of the Mississippi from those flowing into the Pacific or Californian gulf—as the *true western boundaries* of the Louisiana ceded by France to Spain in 1762, and retroceded to France in 1800, and transferred to the United States by France in 1803: but then it must also be admitted, for the same as well as for another and stronger reason, that the British possessions further north were bounded on the coast by the same chain of highlands; for the charter of the Hudson's Bay Company, on which the right to those possessions was founded and maintained, expressly included only the countries traversed by the streams emptying themselves into Hudson's Bay."

Western boundaries of Louisiana.

Charters may certainly be appealed to as evidence against the parties which have granted them, that on their own admission they do not extend their claim beyond the limits of them, and Mr. Greenhow is perfectly justified in confining the limits of Rupert's Land, for such seems to have been the name recognised in the charter, to the plantation in Hudson's Bay, and the countries traversed by the streams emptying themselves into the Bay; but the right to those possessions, as against France,

Evidence of charters against the grantors.

was not founded upon the charter, but generally upon recognised principles of international law, and especially upon the Treaty of Utrecht. So in respect to the northern limit of Louisiana, Crozat's grant, or the grant to Law's Mississippi Company, might be alleged against France, to show that its limits did not extend further north, on the right bank of the Mississippi, than the Illinois. On the other hand, the Treaty of Paris might be appealed to, in order to show against Great Britain, that it did extend on the right bank of the Mississippi as far north as the sources of that river. Again, in respect to the western boundary of Louisiana, Crozat's grant might be cited against France, to show that the province of Louisiana did not extend further westward than the confines of New Mexico. What, however, was the boundary of New Mexico, does not seem to have been determined by any treaty between France and Spain. France seems, indeed, from the words of Crozat's grant, to have considered herself exclusively entitled to the Missouri river on the right bank, and to the Ohio on the left. The claims, however, of Great Britain, clashed with her on the banks of the Ohio, as remarked by Mr. Calhoun in his letter to Mr. Pakenham of Sept. 3. 1844. In an analogous manner the Spanish title conflicted with the French title on the banks of the Missouri; for we find that, in the negotiations attecedent to the Treaty of Washington, in 1819, the Spanish commissioner maintained, that after Santa Fé, the capital of New Mexico, was built, Spain considered all the territory lying to the east and north of New Mexico, so far as the Mississippi and

Conflict of titles.

Missouri, to be her property. (British and Foreign State Papers, 1817–18, p. 438.) The United States, indeed, on succeeding to the French title, declined to admit that the Spanish frontier ever extended so far to the north-east as was alleged; on the other hand, the letter of President Jefferson, of August 1803, shows that they considered their own claims to be limited by "the high lands on the western side of the Mississippi, enclosing all its waters (the Missouri of course.)"

Title of Great Britain by treaties.

By the Treaty of Utrecht, the British possessions to the north-west of Canada were acknowledged to extend to the head-waters of the rivers emptying themselves into the bay of Hudson: by the Treaty of Paris, they were united to the British possessions on the Atlantic by the cession of Canada and all her dependencies; and France contracted her dominions within the right bank of the Mississippi. That France did not retain any territory after this treaty to the north-west of the sources of the Mississippi, will be obvious, when it is kept in mind that the sources of the Mississippi are in 47° 35′, whilst the sources of the Red River, which flows through Lake Winnipeg, and ultimately finds its way by the Nelson River into the bay of Hudson, are in Lake Travers, in about 45° 40′.

Extent of New France westwardly.

Some writers are disposed to consider that the limits of New France extended westwardly across the entire continent to the Pacific Ocean, but no authoritative document has been cited to show that the French Crown ever claimed such an extent of unknown territory, or that its claim was ever admitted. Escarbot's description, in 1617, of New France, which, however, is of no authority, embraces

Escarbot's Histoire de la Nouvelle France.

within its limits almost the entire continent of North America, as may be seen from the extract from his "Histoire de la Nouvelle France," which M. Duflot de Mofras gives: "Ainsi nostre Nouvelle France a pour limites du côté d'ouest les terres jusqu'à la mer dite Pacifique en deça du tropique du Cancer; au midi, les côtes de la mer Atlantique du côté de Cube et de l'Isle Hespagnole; au levant, la mer du nord qui baigne la Nouvelle France; et au septentrion, cette terre qui est dite inconnue, vers la mer glacée jusqu'au pole arctique."

Map of 1757.

The same author cites a map of the year 1757, as confirmatory of this view, in which a great river is exhibited in 45°, on the north-west coast of America, the direction of which is exactly that of the Columbia; but Mr. Greenhow, in the new edition of his work, p. 159., states, that this map was drawn and presented by the French commissaries appointed under the Treaty of Aix-la-Chapelle in 1748, to expose the extravagant pretensions of the British in North America, and that it does not contain the word *Canada*, or *Nouvelle France*, or any other sign of French dominion, the whole division of the continent, between 48° and 31° north latitude, being represented by strong lines and express notes, as included in the limits of the British provinces; nor does it show any large river falling into the Pacific north of the peninsula of California, nor any river entering that ocean north of 36°. A map perhaps better authenticated than this may be referred to in the History of the French Dominions in America, by Jefferys, the geographer to the King of England, in 1760, which does not,

Jefferys' History of the French dominions.

indeed, extend New France to the Pacific: on the contrary, whilst it exhibits the River of the West flowing in a course not unlike that of the Columbia, it does not include the Pacific Ocean at all within its limits, but leaves the west coast of the continent in its real obscurity.

Maps questionable authority.

Maps, however, are but pictorial representations of supposed territorial limits, the evidence of which must be sought for elsewhere. There may be cases, it is true, where maps may be evidence; when, for instance, it has been specially provided that a particular map, such as Melish's Map of North America, shall be the basis of a convention: but it is to be regretted that maps of unsurveyed districts should ever have been introduced into diplomatic discussions, where limits conformable to convenient physical outlines, such as headlands or watercourses, are really sought for, and are understood to be the subject of negociation. The pictorial features of a country, which, in such cases, have been frequently assumed as the basis of the negotiation, have not unusually caused greater embarrassment to both the parties in the subsequent attempt to reconcile them with the natural features, than the original question in dispute, to which they were supposed to have furnished a solution. That the name of Nouvelle France should have been applied by French authors and in French maps to the country as far as the shores of the Pacific Ocean, was as much to be expected as that the name of California should have been extended by the Spaniards to the entire north-west coast of America, which we know to have been the fact, from the negotiations in the Nootka Sound controversy.

CHAPTER XIII.

TREATY OF WASHINGTON.

The Treaty of San Ildefonso.—Ineffectual Negotiations between Spain and the United States, in 1805, respecting the Boundary of Louisiana.—Resumed in 1817.—M. Kerlet's Memoir cited by Spain, Crozat's Charter by the United States, as Evidence.—Spain proposes the Missouri as the mutual Boundary.—The United States propose to cross the Rocky Mountains, and draw the Line from the Snow Mountains along 41° to the Pacific.—Negotiations broken off.—Spain proposes the Columbia River as the Frontier.—Offers the parellel of 41° to the Multnomah, and along tha River to the Sea.—Error in Melish's Map.—The United States propose the Parallel of 41° to the Pacific.—Spain proposes the Parallel of 42° to the Multnomah, and along that River to 43°, thence to the Pacific.—The 42° Parallel adopted.—Source of the Multnomah or Willamette River, in about 44°.—Wilkes' exploring Expedition.—Third Article of the Treaty.—The asserted Rights of Spain to the Californias.—Her Title by Discovery.—The United States decline to discuss them.—The asserted Rights of the United States to the Valley of the Mississippi.—Mr. Greenhow's Remarks.—The Spanish Commissioner declines to negotiate.—Design of the President of the United States.—Question of Rights abandoned.—Object of the Spanish Concessions.—Santa Fé.—Ultimate Agreement.—Review of the Claims of the two Parties.—Principles of international Law advanced by the United States.—Possession of the Sea-coast entitles to Possession of the interior Country.—Vattel.—Inconsistency of the Diplomatists of the United States.—Treaty of Paris.—Natural Boundary of conterminous Settlements, the Mid-distance.—Vattel.—Wheaton.—Acquisition of Title from Natives barred by first Settlers against other European Powers.—Right of Pre-emption.

In the same year in which the Convention of 1818 was concluded at London between the United States

and Great Britain, negotiations were being carried on at Washington between Spain and the United States, with the view of determining the effects of the Treaty of 1803, whereby Louisiana had been ceded by France to the latter power. It had been stipulated in the treaty of San Ildefonso in 1800, that Spain should retrocede "the colony or province of Louisiana, with the same extent which it now has in the hands of Spain, and which it had when France possessed it, and such as it ought to be according to the treaties subsequently made between Spain and other powers." (British and Foreign State Papers, 1817–18, p. 267–9.) The Treaty of 1803 in its turn ceded Louisiana to the United States, "in the name of the French republic, for ever and in full sovereignty, with all its rights and appurtenances, as fully and in the same manner as they have been acquired by the French republic, in virtue of the above-mentioned treaty with his Catholic Majesty." It thus became requisite to determine the limits of this new acquisition of the United States, both on the side of the Floridas, and on that of New Spain. An examination of the discussion regarding the eastern boundary towards the Floridas is unnecessary on the present occasion. The question respecting the western limit was, perhaps, the more difficult to settle, from the circumstance that Texas was claimed by Spain as a province of New Spain, whilst the United States insisted that it was a portion of Louisiana: whilst Spain contended that she had only ceded the *Spanish province* of Louisiana, the United States maintained that she had retroceded the *French colony*. Spain

Treaty of San Ildefonso.

Negotiations in 1805.

thereupon proposed a line which, "beginning at the Gulf of Mexico between the River Carecut or Cascasiu, and the Armenta or Marmentoa, should go to the north, passing between Adaes and Natchitoches, until it cuts the Red River," on the ground that the Arroyo-Hondo, which is midway between Natchitoches and Adaes, had been, in fact, considered to be the boundary in 1763. The United States, on the other hand, insisted on the Rio Bravo del Norte as the western frontier, on the ground that the settlement of La Salle in the Bay of St. Bernard (Matagorda) carried with it a right to the territory as far as the Rio Bravo. Beyond the Red River Spain proposed that the boundary should be determined by commissioners, after a survey of the territory, then but little known, and a reference to documents and dates, "which might furnish the necessary light to both governments upon limits which had never been fixed or determined with exactness." (State Papers, 1817–18, p. 321). Such was the proposal made by Don Pedro Cevallos on the part of Spain, on April 9th, 1805. Messrs. Pinckney and Moore, in reply, proposed a compromise in connection with the western frontier, that a line along the River Colorado, from its mouth to its source, and from thence to the northern limits of Louisiana, should be the boundary; but the Spanish government declined to accept their proposal, and the negotiations were not resumed till the year 1817.

Discontinued.

Spain had, in the mean time, during the captivity of the Spanish monarch in France, been unexpectedly deprived of the greater part of West Florida, in 1810, by the United States, without any

Negotiations reopened in 1817.

declaration of war, or stipulation of peace, which could seem to authorise it. On re-opening the negotiation in 1817, the Spanish Government, having waived all demands on this head, proposed to cede the two Floridas to the United States in exchange for the territory which lies between the River Mississippi and the well-known limit which now separates, and has separated Louisiana, when France possessed it, before the year 1764, and even before the death of King Charles II. of Spain, from the Spanish province of Texas: so that the Mississippi might be the only boundary of the dominions of his Catholic Majesty and of those of the United States. (State Papers, 1817–1818, p. 356.)

Evidence of the limits of Louisiana.

In the course of the subsequent negotiations, the Spanish commissioner, Don Luis de Onis, in a letter of the 12th of March 1818, refused to admit the authority of the grant of Louis XIV. to Crozat as evidence of the limits of Louisiana, and referred to the memoir drawn up by M. Kerlet, for many years governor of the province before it was ceded to Spain by the Treaty of 1763, containing a description of its proper extent and limits. This memoir had been delivered by the Duc de Choiseul, minister of France, to the Spanish ambassador at Paris, as a supplement to the Act of Cession of Louisiana. (State Papers, 1817–18, p. 437.) On the other hand, the Secretary of State, on the part of the United States, maintained that "the only boundaries ever acknowledged by France, before the cession to Spain in Nov. 3. 1762, were those marked out in the grant from Louis XIV. to Crozat." She always claimed the territory which Spain

called Texas, as being within the limits, and forming part of Louisiana, "which in that grant is declared to be bounded westward by New Mexico, eastward by Carolina, and extending inward to the Illinois, and to the sources of the Mississippi, and of its principal branches." (State Papers, 1817–18, p. 470.)

These discussions were suspended for a short time, in consequence of difficulties between the two governments respecting the Seminole Indians in Florida; but on the 24th of October Don Luis d'Onis proposed, that "to avoid all causes of dispute in future, the limits of the respective possessions of both governments to the west of the Mississippi shall be designated by a line beginning on the Gulf of Mexico, between the rivers Marmentoa and Cascasiu, following the Arroyo-Hondo, between Adaes and Natchitochez, crossing the Rio Roxo, or Red River, at 32° of latitude and 93° of longitude from London, according to Melish's Map, and thence running directly north, crossing the Arkansas, the White, and the Osage Rivers, till it strikes the Missouri, and then following the middle of that river to its source, so that the territory on the right bank of the said river will belong to Spain, and that on the left bank to the United States. The navigation of the Mississippi and Marmentoa shall remain free to the subjects of both parties." (State Papers, 1818–19, p. 276.)

Proposal of Spain.

The Missouri.

No proposal had as yet been advanced by either party to carry the boundary line across the Rocky Mountains till October 31. 1818, when Mr. Adams offered, as the ultimatum of the United States, a

Proposal of the United States.

line from the mouth of the River Sabine, following its course to 32° N.L., thence due north to the Rio Roxo, or Red River, following the course of that river to its source, touching the chain of the Snow Mountains in latitude 37° 25′ north, thence to the summit, and following the chain of the same to 41°, thence following the same parallel to the South Sea." The Spanish commissioner, in his reply, undertook to admit the River Sabine instead of the Marmentor, on condition "that the line proposed by Mr. Adams should run due north from the point where it crosses the Rio Roxo till it strikes the Missouri, and thence along the middle of the latter to its source;" but in regard to the extension of the line beyond the Missouri, *along the Spanish possessions to the Pacific*, he declared himself to be totally unprepared by his instructions to discuss such a proposal. The negotiations were in consequence broken off. Subsequently, the Spanish commissioner, having received fresh instructions from his government in a letter of June 16. 1819, proposed to draw the western boundary line between the United States and the Spanish territories from the source of the Missouri to the Columbia River, and along the course of the latter to the Pacific, which Mr. Adams, on the part of the United States, rejected as inadmissible. Don Luis de Onis thereupon, having expressly waived all questions as to the right of either power to the territory in dispute, and also as to the limits of Louisiana, proposed that the boundary line, as suggested by Mr. Adams, should follow the Sabine river to its source, thence by the 94th degree of longitude to the Red River

The Snow Mountains.

Negotiations broken off.

Spain proposes the Columbia river.

of Natchitoches, and along the same to the 95th degree; and crossing it at that point, should run by a line due north to the Arkansas, and along it to its source, thence by a line due west till it strikes the source of the River St. Clemente or Multnomah, in latitude 41°, and along that river to the Pacific Ocean: the whole agreeably to Melish's map. This is another very remarkable instance of the danger of referring even to the best maps, when territorial limits are to be regulated by the physical features of a country. There must have been a monstrous error in Melish's map, which the Spanish commissioner had before him, if such a line could have been drawn upon it from the source of the Arkansas *due west* to the source of the Multnomah, the modern Willamette River. Mr. Adams, in reply, proposed a slightly modified line "to the source of the Arkansas in 41°, and thence due west to the Pacific along the parallel of 41° according to Melish's map up to 1818; but if the source of the Arkansas should fall south or north of 41°, then the line should be drawn due north or south from its source to the 41st parallel, and thence due west to the sea." This would have been an intelligible line. Don Luis d'Onis then communicated a project of a further modified line from the 100th parallel of longitude west of Greenwich along the middle of the Arkansas to the 42d parallel; "thence a line shall be drawn westward, by the same parallel of latitude, to the source of the River San Clemente, or Multnomah, following the course of that river to the 43° of latitude, and thence by a line due west to the Pacific Ocean." Another counter project was

Then offers the Multnomah River.

Error in Melish's map.

United States proposes the 41st parallel.

Spanish offer.

proposed by Mr. Adams on the 13th of February, and ultimately it was agreed between the parties to admit the parallel of 42° from the source of the Arkansas westward to the Pacific Ocean, with the proviso that if the source of the Arkansas should be north or south of 42°, the line should be drawn from it south or north to the 42d parallel. It was fortunate that this proviso was adopted, for actual surveys have since determined the source of the Arkansas to be at the foot of the Sierra Verde, in about 40° 45′ north latitude. On the other hand, as an illustration of the lamentable want of information on the part of the Spanish commissioner in respect to the boundary line which he proposed to be drawn, first of all along the parallel of 41° due west to the source of the Multnomah, and secondly along the parallel of 42° due west to the same river, it may be observed, that the source of this river is ascertained to be very little further south than the 44th parallel of latitude, as may be seen in the excellent American map attached to Commander Wilkes' Exploring Expedition, though even so late as in Mitchell's map for 1834 it is placed in about 42°.

Parallel of 42° adopted.

Wilkes' Exploring Expedition.

The Treaty of Washington, or the Floridas, was thus at last concluded on the 22d February 1819, and by the third article, after specifying the boundary line, as above described, between the two countries west of the Mississippi, it concludes thus: "The two high contracting parties agree to cede and renounce all their rights, claims, and pretensions to the territories described by the said line; that is to say, the United States hereby cede to his Catholic Majesty, and renounce for ever, all their

Third article of the treaty.

rights, claims, and pretensions to the territories lying west and south of the above described line; and in like manner his Catholic Majesty cedes to the United States all his rights, claims, and pretensions to any territories east and north of the said line, and for himself, his heirs and successors, renounces all claim to the said territories for ever." (Martens' Nouveau Recueil des Traités, v. p. 333.)

The asserted rights of Spain.

It will be observed from the words of the above article, that the nature of the rights reciprocally ceded are in no manner specified. It thus becomes necessary to look to the antecedent negotiations to determine this question. In the first communication from the Chevalier d'Onis, on January 5. 1818, in respect to the western boundary of Louisiana, we find him assert that "the right and dominion of the Crown of Spain to the north-west coast of America, as high up as the Californias, is not less certain and indisputable (than her claim to West Florida), the Spaniards having explored as far as the 47th degree in the expedition under Juan de Fuca in 1592, and in that of Admiral Fonte to the 55th degree in 1640.

The Californias.

Her title by discovery.

"The dominion of Spain in these vast regions being thus established, and her rights of discovery, conquest, and possession, being never disputed, she could scarcely possess a property founded on more respectable principles, whether of the law of nations, of public law, or any others which serve as a basis to such acquisitions as all the independent kingdoms and states of the earth consist of." (State Papers, 1817–18, p. 427.)

Mr. Adams, in his reply of January 16. 1818,

The United States decline the discussion.

stated that "the President of the United States considered it would be an unprofitable waste of time to enter again at large upon topics of controversy, which were at that time (1805) so thoroughly debated, and upon which he perceives nothing in your notes, which was not then substantially argued by Don Pedro Cevallos, and to which every reply essential to elucidate the rights and establish the pretensions on the part of the United States was then given." Without, therefore, noticing even in the slightest manner that portion of the Spanish title now for the first time set out in respect of the Californias, and which had not in any manner been alluded to in the previous correspondence, he simply proposed, "the Colorado River from its mouth to its source, and from thence to the northern limits of Louisiana, to be the western boundary; or to leave that boundary unsettled for future arrangement." It may be observed, that the paramount object of the United States at this moment, was to obtain the cession of the Spanish claims to territories *eastward* of the Mississippi. (State Papers, 1817–18, p. 450.) The western frontier was comparatively of less pressing importance.

Various communications having in the mean time been exchanged, Mr. Adams at last, in his letter of Oct. 31. 1818, proposed for the first time, on the part of the United States, an extension of the boundary to the Pacific Ocean, namely, a line drawn due west along the 41st parallel. He did not attempt, on this occasion, to contest the position which Spain had taken up in respect to territory west of the

Rocky Mountains, but contented himself with again asserting, that the rights of the United States to the entire valley of the Mississippi and its confluents were established beyond the reach of controversy. Mr. Greenhow (p. 316.) observes, "On these positive assertions of the Spanish minister, Mr. J. Q. Adams, the American plenipotentiary and Secretary of State, did not consider himself required to make any comment; and the origin, extent, and value of the claims of Spain to the north-western portion of America, remained unquestioned during the discussion."

Asserted rights of the United States.

Mr. Greenhow's remarks.

The Spanish commissioner seems to have regarded the silence of Mr. Adams as a tacit admission that his position was unassailable, and therefore was totally unprepared for the proposal of the United States, if we may judge from his reply:—"What you add respecting the extension of the same line beyond the Missouri, along the Spanish possessions to the Pacific Ocean, exceeds by its magnitude and its transcendency all former demands and pretensions stated by the United States. Confining, therefore, myself to the power granted to me by my sovereign, I am unable to stipulate any thing on this point. (State Papers, 1818–19, p. 284.)

The Spanish commissioner declines to negotiate.

Mr. Adams, in his reply of Nov. 30. 1818 (ibid. 291.), writes, "As you have now declared that you are not authorised to agree, either to the course of the Red River (Rio Roxo), for the boundary, nor to the 41st parallel of latitude, from the Snow Mountains to the Pacific Ocean, the President deems it useless to pursue any further the attempt

at an adjustment of this object by the present negotiation." Don Luis, in withdrawing for the present moment from the negotiation, in his letter of Dec. 12. 1818, (ibid. p. 502.), observes, "I even expressed my earnest desire to conclude the negotiation, so far as to admit the removal of the boundary line, from the Gulf of Mexico, on the river Sabine, as proposed by you; and I only added, that it should run more or less obliquely to the Missouri, thereby still keeping in view the consideration of conciliating the wish that your government might have, of retaining such other settlements as might have been formed on the bank of that river, and observing, nevertheless, that it was not to pass by New Mexico, or *any other provinces or dominions of the crown of Spain.*"

The Spanish commissioner, after obtaining fresh instructions to authorise him to extend the boundary line to the Pacific Ocean, stated in a letter of Jan. 16. 1819, to Mr. Adams (State Papers, 1819–20, p. 565.), that "his Majesty will agree that the boundary line between the two states shall extend from the source of the Missouri, westward, to the Columbia River, and along the middle thereof to the Pacific Ocean; in the hope that this basis would be accepted by the President, "as it presents the means of realising his great plan of extending a navigation from the Pacific to the remotest points of the northern states."

Design of the President of the United States.

This offer was not accepted, and Mr. Adams, in his reply of Jan. 29. 1819, simply stated, "that the proposal to draw the western boundary line between the United States and the Spanish territories

on this continent, from the source of the Missouri to the Columbia River, cannot be admitted," (ibid. p. 566.); and at the same time he renewed his proposal of the 31st of October last, as to the parallel of 41°.

Don Luis de Onis, as might be expected, did not accede to this, and in his next letter, of Feb. 1. 1819, writes, "I have proved to you in the most satisfactory manner, that neither the Red River of Natchitoches, nor the Columbia, ever formed the boundary of Louisiana; but as you have intimated to me that it is useless to pursue the discussion any further, I acquiesce with you therein, and I agree that, keeping out of view the rights which either party may have to the territory in dispute, we should confine ourselves to the settlement of those points which may be for the mutual interest and convenience of both.

Question of right abandoned.

"Upon this view, therefore, of the subject, and considering that the motive for declining to admit my proposal of extending the boundary line from the Missouri to the Columbia, and along that river to the Pacific, appears to be the wish of the President to include, within the limits of the Union, all the branches and rivers emptying into the said River Columbia, I will adapt my proposals on this point, so as fully to satisfy the demand of the United States, without losing sight of the essential object, namely, that the boundary line shall, as far as possible, be natural and clearly defined, and leave no room for dispute to the inhabitants on either side."

Object of the Spanish concessions.

He therefore proposed, as the Red River rose

Santa Fè. within a few leagues of Santa Fé, the capital of New Mexico, to substitute the Arkansas for the Red River; so that the line along the Red River should not be drawn further westward than the 95th degree of longitude, and crossing it at that point, should run due north to the Arkansas, and along it to its source; thence, by a line due west, till it strikes the source of the River St. Clemente, or Multnomah, in latitude 41°, and along that river to the Pacific Ocean. The whole agreeably to Melish's Map." — (State Papers, 1819–20, p. 568.)

Mr. Adams on the other hand, on Feb. 6. 1819, repeated the proposal of the United States as to the line from the source of the Arkansas River being drawn along the parallel of 41° N.L. to the Pacific, with other modifications in the general detail of the boundary.

This proposal, however, was not accepted, and the Spanish commissioner in his turn, on Feb. 9., proposed a different line, to be drawn "along the middle of the Arkansas to the 42° of latitude; thence a line shall be drawn westward by the same parallel of latitude to the source of the River San Clemente or Multnomah, following the course of that river to the 43° of latitude, and thence by a line to the Pacific Ocean." (Ibid. p. 570.)

Mr. Adams, in his answer of February 13. 1819, still retained the parallel of 41° of latitude from the source of the Arkansas to the South Sea, according to Melish's Map. (Ibid. p. 575.)

Ultimate agreement. The Chevalier de Onis, on the 16th of February 1819, ultimately agreed "to admit the 42° in-

stead of the 43° of latitude from the Arkansas to the Pacific Ocean." (Ibid. p. 580.)

The claims of the two parties.

These extracts from the documentary correspondence preliminary to the Treaty of 1819, will show the nature of the claims maintained by the two parties, and thus serve to explain the meaning of the 3d article of the treaty. Spain asserted her right and dominion over the north-west coast of America as high up as the Californias, as based upon the discoveries of Juan de Fuca in 1592, and Admiral Fonte in 1640. The United States made *no claim* to territory west of the Rocky Mountains. On the other hand, the United States asserted her right over the coasts of the Mexican Gulf from the Mississippi to the Rio Bravo by virtue of Crozat's grant, and of the settlement of La Salle in the Bay of St. Bernard, whilst Spain maintained that the expedition of Hernando de Soto and others entitled her by discovery to the entire coasts of the Mexican Gulf, and that the crown of Spain, before 1763, had extended her dominion eastward over the right side of the Mississippi from its mouth to the mouth of the Missouri, and northward over the right side of the latter river from its mouth to its source; in other words, that the dependencies of the Spanish province of New Mexico extended as far as the Missouri and the Mississippi, and the Spanish province of Texas as far as the Red River and Mississippi. The rights, claims, and pretensions, therefore, to any territories lying east and north of the parallel of 42°, which Spain, by the 3d article of the Treaty

of 1819, ceded to the United States, had respect to the Spanish province of Texas, the Spanish province of New Mexico, and the Californias; the rights, claims, and pretensions which the United States ceded to his Catholic Majesty to any territories west and south of this line, had reference to the coasts of the Gulf of Mexico as far as the Rio Bravo, and the inland country; for no claim or pretension had been advanced by the United States to territory beyond the Rocky Mountains, and the object of the negotiation was expressly to determine the boundaries of Louisiana, which the United States insisted had been ceded to them in the full extent in which it had been possessed by France, according to the limits marked out by Louis XIV. in his grant to Crozat.

Principles of international law advanced by the United States.

In the course of these negotiations, we find certain principles of international law laid down by the commissioners of the United States as applicable to the question of disputed boundaries. They seem to have been advanced after careful consideration, for Messrs. Pinckney and Monroe formally enunciated them on the 20th of April 1805, as "dictated by reason, and adopted in practice by European Powers in the discoveries and acquisitions which they have respectively made in the new world;" and Mr. Adams, on the 12th of March 1820, restated them again as principles "sanctioned alike by immutable justice, and the general practice of the European nations, which have formed settlements and held possessions in this hemisphere." (British and Foreign State Papers, 1817–18, pp. 327. 467.)

The *first* is, "That whenever *any European nation takes possession of any extent of sea-coast,* that possession is understood as extending into the interior country, to the sources of the rivers emptying *within that coast,* to all their branches, and the country they cover, and to give it a right in exclusion of all other nations to the same." Possession of the sea-coast.

"It is evident," write Messrs. Pinckney and Monroe (ibid. p. 327.), "that some rule or principle must govern the rights of European Powers in regard to each other in all such cases, and it is certain that none can be adopted, in those to which it applies, more reasonable or just than the present one. Many weighty considerations show the propriety of it. Nature seems to have destined a range of territory so described for the same society, to have connected its several parts together by the ties of a common interest, and to have detached them from others. If this principle is departed from, it must be by attaching to such discovery and possession a more enlarged or contracted scope of acquisition; but a slight attention to the subject will demonstrate the absurdity of either. The latter would be to restrict the rights of a European Power, who discovered and took possession of a new country, to the spot on which its troops or settlements rested, a doctrine which has been totally disclaimed by all the Powers who made discoveries and acquired possessions in America. The other extreme would be equally improper; that is, that the nation who made such discovery should, in all cases, be entitled to the whole of the territory

so discovered. In the case of an island, whose extent was seen, which might be soon sailed round, and preserved by a few forts, it may apply with justice; but in that of a continent it would be absolutely absurd. Accordingly, we find, that this opposite extreme has been equally disclaimed and disavowed by the doctrine and practice of European nations. The great continent of America, north and south, was never claimed or held by any one European nation, nor was either great section of it. Their pretensions have been always bounded by more moderate and rational principles. The one laid down has obtained general assent.

"This principle was completely established in the controversy which produced the war of 1755. Great Britain contended that she had a right, *founded on the discovery and possession of such territory*, to define its boundaries by given latitudes in grants to individuals, retaining the sovereignty to herself from sea to sea. This pretension on her part was opposed by France and Spain, and it was finally abandoned by Great Britain in the treaty of 1763, which established the Mississippi as the western boundary of her possessions. *It was opposed by France and Spain on the principle here insisted on, which of course gives it the highest possible sanction in the present case.*"

Vattel. To a similar purport Vattel, b. i. § 266., writes: "When a nation takes possession of a country, with a view to settle there, it takes possession of every thing included in it, as lands, lakes, rivers, &c." It is universally admitted, that when a nation takes possession of a country, she is considered to appro-

priate to herself all its natural appendages, such as lakes, rivers, &c., and it is perfectly intelligible, why the practice of European nations has sanctioned the exclusive title of the first settlers on any extent of sea-coast to the interior country within the limits of the coast which they have occupied, because their settlements bar the approach to the interior country, and other nations can have no right of way across the settlements of independent nations. In reference, however, to the extent of coast, which a nation may be presumed to have taken possession of by making a settlement in a vacant country, the well-known rule of *terræ dominium finitur, ubi finitur armorum vis*, might on the first thought suggest itself; but it has not been hitherto held that there is any analogy between jurisdiction over territory, and jurisdiction over adjoining seas: on the contrary, it was ruled in the Circuit Court of New York, 1825, in the case of Jackson v. Porter, 1 Paine, 457., "that under the second article of the treaty with Great Britain, the precincts and jurisdiction of a fort are not to be considered three miles in every direction, by analogy to the jurisdiction of a country over that portion of the sea surrounding its coasts, but they must be made out by proof." The comity of nations, however, has recognised in the case of settlements made in a vacant territory for the purpose of colonisation, a title in the settlers to such an extent of territory as it may fairly be presumed that they intend to cultivate (Vattel, b. i. § 81.), and the possession of which is essential either to the convenience or security of the settlement,

without being inconvenient to other nations. The limitation of this extent seems rather to have been regulated by special conventions, than by any rule of uniform practice.

On the authority of this principle as above stated, Messrs. Pinckney and Monroe contended, that "by the discovery and possession of the Mississippi in its whole length, and *the coast adjoining it*, the United States are entitled to the whole country dependent on that river, the waters which empty into it, and their several branches, *within the limits on that coast.* The extent to which this would go it is not in our power to say; but the principle being clear, dependent on plain and simple facts, it would be easy to ascertain it."

It will have been observed, that the opposition of France and Spain to the pretensions of Great Britain is adduced by Messrs. Pinckney and Munroe, as giving the highest sanction to this principle. A passage in Mr. Calhoun's letter of Sept. 3. 1844, to Mr. Pakenham, forms a striking contrast. Having alluded to the claims of France and Great Britain, first conflicting on the banks of the Ohio, he writes:

Inconsistency of the United States.

"If the relative strength of these different claims may be tested by the result of that remarkable contest, that of continuity westward must be pronounced to be the stronger of the two. England has had at least the advantage of the result, and would seem to be foreclosed against contesting the principle — particularly as against us, who contributed so much to that result, and on whom that contest, and her example and her pretensions from the first settlement of our country, have contributed

to impress it so deeply and indelibly." In other respects Mr. Calhoun adopts the same view of the early European settlements in North America, that the respective nations "claimed for their settlements usually, specific limits *along the coasts* or bays on which they were formed, and generally a region of *corresponding width* extending across the entire continent to the Pacific Ocean."

That the hypothesis of Mr. Calhoun's argument was meant to be affirmed, may be inferred from Mr. Gallatin having categorically asserted the same fact in 1826, as being notorious. It does not however appear from the protracted negotiations prior to the Treaty of Paris, that any conflicting principles of international law were advanced by the two parties, or any question of disputed title set at rest by the treaty. On the contrary, it was intimated in the course of the negotiations, by Great Britain, that she considered France to have the natives on the left bank of the Mississippi under her protection, when she proposed that the King of France should "consent to leave them under the protection of Great Britain."

Treaty of Paris.

Natives under protection of France.

The *second* rule is, "that whenever a European nation makes a discovery, and takes possession of any portion of that continent, and another afterwards does the same *at some distance from it*, where the boundary between them is not determined by the principle above mentioned, the middle distance becomes such of course. The justice and propriety of this rule are too obvious to require illustration."

Conterminous settlements.

The principle here stated seems very analogous to that which is recognised by all writers on inter-

national law, as regulating the navigation of rivers.

Vattel. Thus Vattel (i. § 266): "When a nation takes possession of a country bounded by a river, she is considered as appropriating to herself the river also; for the utility of a river is too great to admit a supposition that the nation did not intend to reserve it for herself. Consequently, the nation that first established her dominion on one of the banks of the river, is considered as being the first possessor of all that part of the river which bounds her territory. Where there is a question of a *very broad river*, this presumption admits not of a doubt, so far, at least, as relates to a part of the river's breadth, and the strength of the presumption increases or diminishes in the inverse ratio with the breadth of the river; for the narrower the river is, the more does the safety and convenience of its use require that it should be subject entirely to the empire and property of that nation." To make the reasoning more complete, it might have been added, "the broader the river is, the stronger claim has each party to a portion of it, as requisite for its own convenience, and not likely to be attended with inconvenience to the other party."

Mr. Wheaton. Mr. Wheaton states the rule of division more explicitly (part ii. ch. iv.):—"Where a navigable river forms the boundary of conterminous states, the middle of the channel, or 'thalweg,' is generally taken as the line of separation between the two states, the presumption of law being, that the right of navigation is common to both: but this presumption may be destroyed by actual proofs of prior occupancy, and long undisturbed possession

giving one of the riparian proprietors the exclusive title to the entire river."

In an analogous manner, where a large tract of unoccupied land forms the boundary of conterminous settlements, the middle distance is suggested by natural equity as the line of demarcation, where such line is not inconvenient to either party, and when one party cannot establish a stronger presumption than the other of a perfect right in its own favour.

Thus, Messrs. Pinckney and Monroe contended, that "by the application of this principle to the discovery made by M. de la Salle of the bay of St. Bernard, and his establishment there on the western side of the River Colorado, the United States have a just right to a boundary founded on the middle distance between that point and the then nearest Spanish settlement; which, it is understood, was in the province of Panuco, unless that claim should be precluded on the principle above mentioned. To what point that would carry us, it is equally out of our power to say; nor is it material, as the possession in the bay of St. Bernard, taken in connection with that on the Mississippi, has been always understood, as of right we presume it ought, to extend to the Rio Bravo, on which we now insist."

Acquisitions from natives.

The *third* rule is, "that whenever any European nation has thus acquired a right to any portion of territory on that continent, that right can never be diminished or affected by any other Power, by virtue of purchases made, by grants, or conquests of the natives within the limits described."

"It is believed," continued the commissioners,

"that this principle has been admitted, and acted on invariably, since the discovery of America, in respect to their possessions there, by all the European Powers. It is particularly illustrated by the stipulations of their most important treaties concerning those possessions, and the practice under them, viz., the Treaty of Utrecht in 1713, and that of Paris in 1763."

The practice of European nations has certainly recognised in the nation which has first occupied the territory of savage tribes, that live by hunting, fishing, and roaming habits, the sole right of acquiring the soil from the natives by purchase, or cession, or conquest, for the purpose of establishing settlements. The more humane spirit of the modern code of nations seems disposed to reduce this right to a right of *pre-emption*, as against other European nations.

Right of pre-emption.

The applicability of the above principles to the solution of the questions at present under discussion between the governments of the United States and Great Britain, will be considered in a subsequent chapter.

CHAPTER XIV.

NEGOTIATIONS BETWEEN GREAT BRITAIN AND THE UNITED STATES IN 1823–24.

Proceedings in Congress after the Convention of 1818.—Russian Ukase of 1821.—Russian Title to the North-west Coast of America.—Declaration of President Monroe, of Dec. 2. 1823.—Protest of Russia and Great Britain.—Report of General Jessup.—Exclusive Claim set up by the United States, on the Ground of Discovery by Captain Gray, and Settlement at Astoria.—Extent of Title by Discovery of the Mouth of a River.—The United States claim up to 51° N. L.—British Objections.—Convention of 1790.—Discovery by Captain Gray a private Enterprise.—Mr Rush's Reply.—Gray's Vessel a national Ship for such an Occasion.—Superior Title of Spain.—British Answer.—Pretensions of Spain never admitted.—Drake's Expedition in 1578.—Mr. Rush's further Reply.—Treaty of 1763, a Bar to Great Britain westward of the Mississippi.—Exclusive Claim of the United States to the entire Valley of the Columbia River.—Proposal of the British Commissioners of the Parallel of 49° to the North-easternmost Branch of the Columbia, and thence along the Mid-channel of the River to the Sea.—Counter-proposal of the United States of the Parallel of 49° to the Sea.—Negotiations broken off.

THE Convention of 1818 had provided that the country westward of the Stony Mountains should be free and open, for the term of ten years from the signature of the treaty, to the vessels, citizens, and subjects of the two Powers, without prejudice to the territorial claims of either party. Two years afterwards a committee was appointed by the House of Representatives in Congress, for an "inquiry as

Proceedings in Congress

to the situation of the settlements on the Pacific Ocean, and as to the expediency of occupying the Columbia River;" and a bill was subsequently brought in "for the occupation of the Columbia, and the regulation of the trade with the Indians in the territories of the United States." The bill, however, was suffered to lie on the table of the House, and although it was again brought before Congress in the ensuing year, no further steps were taken until the winter of 1823. (Greenhow, p. 332.)

Russian ukase.

In the mean time the attention of both Powers was arrested by the publication of a Russian ukase on 16th September 1821, by which an exclusive title was asserted in favour of Russian subjects to the north-west coast of America, as far south as 51° north lat., and all foreign vessels were prohibited from approaching within one hundred miles of the shore, under penalty of confiscation. Great Britain lost no time in protesting against this edict, and Mr. Adams, on the part of the United States, declined to recognise its validity. A correspondence ensued between Mr. Adams and M. de Poletica, the Russian Minister at Washington, which may be referred to in the British and Foreign State Papers for 1821–22.

Russian title.

M. de Poletica alleged, as authorising this edict on the part of the Emperor, first discovery, first occupancy, and, in the last place, a peaceable and uncontested possession of more than half a century. Both the other Powers, however, contested the extent to which so perfect a title could be made out by Russia, and separate negotiations were in consequence opened between Russia and the other

two Powers for the adjustment of their conflicting claims. The question was additionally embarrassed by a declaration on the part of President Monroe, on December 2. 1823, that "the American continents, by the free and independent condition which they had assumed, were henceforth not to be considered as subjects for colonisation by any European power." (Greenhow, p. 325.) Against this declaration, both Russia and Great Britain formally protested. A further ground of dissension between Great Britain and the United States resulted from an official paper laid before the House of Representatives in Congress, on February 16. 1824, by General Jessup, the Quartermaster-General, in which it was proposed to establish certain military posts between Council Bluffs on the Missouri, and the Pacific, by which, he adds, "present protection would be afforded to our traders; and at the expiration of the privilege granted to British subjects to trade on the waters of the Columbia, we should be enabled to remove them from our territory, and to secure the whole trade to our citizens." In the conference which ensued at London on the following July, the British commissioners remarked that such observations "were calculated to put Great Britain especially upon her guard, coming, as they did, at a moment when a friendly negotiation was pending between the two Powers for the adjustment of their relative and conflicting claims to the entire district of the country." (Greenhow, p. 337.)

Declaration of President Monroe.

Protest of Russia and Great Britain.

Proposal of General Jessup.

Such proceedings on the part of the Executive of the United States were not calculated to facilitate the settlement of the points likely to become sub-

jects of controversy in the approaching negotiations, either at St. Petersburg or at London. The instructions which were to guide the commissioners of the United States were set forth by Mr. Adams, in a letter to Mr. Rush, the Minister Plenipotentiary at London, of the date of July 22. 1823, which may be referred to in the British and Foreign State Papers, 1825–26, p. 498. In the previous negotiations of 1818, as already observed, Messrs. Gallatin and Rush "*did not assert a perfect right* to the country westward of the Stony Mountains, but insisted that their claim was "*at least good against Great Britain.* The 49th degree of north latitude had, in pursuance of the Treaty of Utrecht, been fixed indefinitely as the line between the northern British possessions and those of France, including Louisiana, now a part of our territories. There was no reason why, if the two countries extended their claims westward, the same line should not be continued to the Pacific Ocean. So far as discovery gave a claim, ours to the whole country on the waters of the Columbia River was indisputable." Subsequently, however, to these negotiations, His Catholic Majesty had ceded to the United States, by the Treaty of Washington, of February 22. 1819, commonly called the Florida Treaty, "all his rights, claims, and pretensions to any territory" north of the 42d parallel of north latitude; and Mr. Rush opened the negotiations by stating, that "the rights thus acquired from Spain were regarded by the government of the United States as surpassing the rights of all other European Powers on that coast." Apart, however, from this right, "the United States

claimed in their own right, and as their absolute and exclusive sovereignty and dominion, the whole of the country west of the Rocky Mountains, from the 42d to at least as far up as the 51st degree of north latitude. This claim they rested upon their first discovery of the river Columbia, followed up by an effective settlement at its mouth: a settlement which was reduced by the arms of Britain during the late war, but formally surrendered up to the United States at the return of peace.

Exclusive claim set up by the United States.

"Their right by first discovery they deemed peculiarly strong, having been made, not only from the sea by Captain Gray, but also from the interior by Lewis and Clarke, who first discovered its sources, and explored its whole inland course to the Pacific Ocean. It had been ascertained that the Columbia extended, by the River Multnomah, to as low as 42 degrees north; and by Clarke's River, to a point as high up as 51 degrees, if not beyond that point; and to this entire range of country, contiguous to the original dominion of the United States, and made a part of it by the almost intermingling waters of each, the United States considered their title as established by all the principles that had ever been applied on this subject by the Powers of Europe to settlements in the American hemisphere. I asserted," writes Mr. Rush, "that *a nation discovering a country, by entering the mouth of its principal river at the sea coast, must necessarily be allowed to claim and hold as great an extent of the interior country as was described by the course of such principal river and its tributary streams;* and that the claim to this extent became doubly strong,

Extent of title by discovery.

where, as in the present instance, the same river had also been explored from its very mountain-springs to the sea.

"Such an union of titles, imparting a validity to each other, did not often exist. I remarked, that it was scarcely to be presumed that any European nation would henceforth project any colonial establishment on any part of the north-west coast of America, which as yet had never been used to any other useful purpose than that of trading with the aboriginal inhabitants, or fishing in the neighbouring seas; but that the United States should contemplate, and at one day form, permanent establishments there, was naturally to be expected, as proximate to their own possessions, and falling under their immediate jurisdiction. Speaking of the Powers of Europe, who had ever advanced claims to any part of this coast, I referred to the principles that had been settled by the Nootka Sound Convention of 1790, and remarked, that Spain had now lost all the *exclusive colonial rights that were recognised under that convention*, first, by the fact of the independence of the South American States and of Mexico, and next, by her express renunciation of all her rights, of whatever kind, above the 42d degree of north latitude, to the United States. Those new States would themselves now possess the rights incident to their condition of political independence, and the claims of the United States above the 42d parallel, as high up as 60°, claims as well in their own right as by their succession to the title of Spain, would henceforth necessarily preclude other nations from forming colonial esta-

blishments upon any part of the American continents. I was, therefore, instructed to say, that my government no longer considered any part of those continents as open to future colonisation by any of the Powers of Europe, and that this was a principle upon which I should insist in the course of these negotiations."

Claim of United States up to 51° N. L.

The proposal which Mr. Rush was authorised to make on the part of the United States was, that for the future no settlements should be made by citizens of the United States north of 51°, or by British subjects south of 51°, inasmuch as the Columbia River branched as far north as 51°. Mr. Adams, however, in his instructions, concludes with these words:—"As, however, the line already runs in latitude 49° to the Stony Mountains, should it be earnestly insisted upon by Great Britain, we will consent to carry it in continuance on the same parallel to the sea."

British objections.

On the other hand the British plenipotentiaries, on their part, totally declined the proposal, and totally denied the principles under which it had been introduced. "They said that Great Britain considered the whole of the unoccupied parts of America as being open to her future settlements, in like manner as heretofore. They included within these parts, as well that portion of the north-west coast lying between the 42d and 51st degrees of latitude, as any other parts. The principle of colonisation on that coast, or elsewhere, on any portion of those continents not yet occupied, Great Britain was not prepared to relinquish. Neither was she prepared to accede to the exclusive claim of the United

Convention of 1790.

States. She had not, by her convention with Spain of 1790, or at any other period, conceded to that Power any exclusive rights on that coast, where actual settlements had not been formed. She considered the same principles to be applicable to it now as then. She could not concede to the United States, who held the Spanish title, claims which she had felt herself obliged to resist when advanced by Spain, and on her resistance to which the credit of Great Britain had been thought to depend.

"Nor could Great Britain at all admit, the plenipotentiaries said, the claim of the United States, as founded on their own first discovery. It had been objectionable with her in the negotiation of 1818, and had not been admitted since. Her surrender to the United States of the post at Columbia River after the late war, was in fulfilment of the provisions of the first article of the Treaty of Ghent, without affecting questions of right on either side.

Discovery by Captain Gray.

Britain did not admit the validity of the discovery by Captain Gray. He had only been on an enterprise of his own, as an individual, and the British government was yet to be informed under what principles or usage, among the nations of Europe, his having first entered or discovered the mouth of the River Columbia, admitting this to have been the fact, was to carry after it such a portion of the interior country as was alleged. Great Britain entered her dissent to such a claim; and least of all did she admit that the circumstance of a merchant vessel of the United States having penetrated the coast of that continent at Columbia River, was to be taken to extend a claim in favour of the

United States along the same coast, both above and below that river, over latitudes that had been previously discovered and explored by Great Britain herself, in expeditions fitted out under the authority and with the resources of the nation. This had been done by Captain Cook, to speak of no others, whose voyage was at least prior to that of Captain Gray. On the coast only a few degrees south of the Columbia, Britain had made purchases of territory from the natives before the United States were an independent power; and upon that river itself, or upon rivers that flowed into it, west of the Rocky Mountains, her subjects had formed settlements coeval with, if not prior to, the settlement by American citizens at its mouth."

Such was the tenor of the opening of the negotiations. Mr. Rush, in resuming the subject, stated, that it "was unknown to his government that Great Britain had ever even advanced any claim to territory on the north-west coast of America, by the right of occupation, before the Nootka Sound controversy. It was clear, that by the Treaty of Paris of 1763, her territorial claims to America were bounded westward by the Mississippi. The claim of the United States, under the *discovery* by Captain Gray, was therefore, at all events, sufficient to over-reach, in point of time, any that Great Britain could allege along that coast, on the ground of *prior occupation or settlement.* As to any alleged settlements by her subjects on the Columbia, or on rivers falling into it, earlier, or as early, as the one formed by American citizens at Astoria, I knew not of them, and was not prepared to admit

Mr. Rush's reply.

the fact. As to the discovery itself of Capt. Gray, it was not for a moment to be drawn into question. It was a fact before the whole world. The very geographers of Great Britain had adopted the name which he had given to this river."

Having alluded to the fact of Vancouver having found Captain Gray there, Mr. Rush proceeded to meet the objection that the discovery of the Columbia River was not made by a national ship, or under national authority. "The United States," he said, "could admit of no such distinction; could never surrender, under it or upon any ground, their claim to this discovery. The ship of Captain Gray, whether fitted out by the government of the United States or not, was a *national ship*. If she was not so in a technical sense of the word, she was in the full sense of it, *applicable to such an occasion*. She bore at her stern the flag of the nation, sailed forth under the protection of the nation, and was to be identified with the rights of the nation."

Gray's discovery a national act.

Gray's vessel a national ship.

"The extent of this interior country attaching to this discovery was founded," Mr. Rush contended, "upon a principle at once reasonable and moderate: reasonable, because, as discovery was not to be limited to the local spot of a first landing-place, there must be a rule both for enlarging and circumscribing its range; and none more proper than that of taking the water-courses which nature has laid down, both as the fair limits of the country, and as indispensable to its use and value; moderate, because the nations of Europe had often, under their rights of discovery, carried their claims much further. Here I instanced, as sufficient for my

purpose, and pertinent to it, the terms in which many of the royal charters and letters patent had been granted, by the Crown of England, to individuals proceeding to the *discovery* or *settlement* of new countries on the American continent. Amongst others, those from Elizabeth in 1578, to Sir Humphrey Gilbert, and in 1584, to Sir Walter Raleigh: those from James I. to Sir Thomas Yates, in 1606 and 1607, and the Georgia charter of 1732. By the words of the last, a grant is passed to all territories along the sea-coast, from the River Savannah to the most southern stream 'of another great river, called the Alatamaha, and westward from the heads of the said rivers in a direct line to the South Seas.' To show that Britain was not the only European nation, who, in her territorial claims on this continent, had had an eye to the rule of assuming water-courses to be the fittest boundaries, I also cited the charter of Louis XIV. to Crozat, by which 'all the country drained by the waters emptying directly or indirectly into the Mississippi,' is declared to be comprehended under the name, and within the limits of Louisiana."

In respect to the title derived by the United States from Spain, Mr. Rush contended that, "if Great Britain had put forth no claims on the north-west coast, founded *on prior occupation*, still less could she ever have established any, at any period, founded *on prior discovery*. The superior title of Spain on this ground, as well as others, was indeed capable of demonstration. *Russia had acknowledged it in* 1790, as the State Papers of the Nootka Sound controversy would show. The memorial of the

Superior title of Spain.

Spanish Court to the British minister on that occasion expressly asserted, that notwithstanding all the attempted encroachments upon the Spanish coasts of the Pacific Ocean, Spain had preserved her possessions there entire,—possessions which she had constantly, and before all Europe, on that and other occasions, declared to extend to as high at least as the 60th degree of north latitude. The very first article of the Nootka Sound Convention attested, I said, the superiority of her title; for whilst by it the nations of Europe generally were allowed to make settlements on that coast, it was only for the purposes of trade with the natives, thereby excluding the right of any exclusive or colonial establishments for other purposes. As to any claim on the part of Britain under the voyage of Captain Cook, I remarked that this was sufficiently superseded (passing by every thing else) by the Journal of the Spanish expedition from San Blas in 1775, kept by Don Antonio Maurelle, for an account of which I referred the British plenipotentiaries to the work of Daines Barrington, a British author. In that expedition, consisting of a frigate and a schooner, fitted out by the Viceroy of Mexico, the north-west coast was visited in latitude 45, 47, 49, 53, 55, 56, 57, and 58 degrees, not one of which points there was good reason for believing had ever been explored, or as much as seen, up to that day, by any navigator of Great Britain. There was, too, I said, the voyage of Juan Perez, prior to 1775; that of Aguilar, in 1601, who explored that coast in latitude 45°; that of De Fuca in 1592, who explored it in latitude

48°, *giving the name*, which *they still bore*, to the straits in that latitude, without going through a much longer list of other early Spanish navigators in that sea, whose discoveries were confessedly of a nature to put out of view those of all other nations. I finished by saying, that in the opinion of my government, the title to the United States to the whole of that coast, from latitude 42° to as far north as latitude 60°, was therefore superior to that of Great Britain or any other Power; first, through the proper claim of the United States by discovery and settlement, and secondly, as now standing in the place of Spain, and holding in their hands all her title."

British reply.

The British plenipotentiaries, in their reply, "repeated their animated denials of the title of the United States, as alleged to have been acquired by themselves, enlarging and insisting upon their objections to it, as already stated. Nor were they less decided in their renewed impeachments of the title of Spain. They said that it was well known to them what had formerly been the pretensions of Spain to absolute sovereignty and dominion in the South Seas, and over all the shores of America which they washed: but that these were pretensions which Britain had never admitted: on the contrary, had strenuously resisted them. They referred to the note of the British minister to the Court of Spain, of May 16. 1790, in which Britain had not only asserted a full right to an uninterrupted commerce and navigation in the Pacific, but also that of forming, with the consent of the natives, whatever establishments she thought proper on the

Pretensions of Spain never admitted.

north-west coast, in parts not already occupied by other nations. This had been the doctrine of Great Britain, and from it, nothing that was due in her estimation to other Powers, now called upon her in any degree to depart.

"As to the alleged prior discoveries of Spain all along that coast, Britain did not admit them but with great qualification. She could never admit that the mere fact of Spanish navigators having first seen the coast at particular points, even where this was capable of being substantiated as the fact, without any subsequent or efficient acts of sovereignty or settlement on the part of Spain, was sufficient to exclude all other nations from that portion of the globe. Besides, they said, even on the score of prior discovery on that coast, at least as far up as 48° north latitude, Britain herself had a claim over all other nations.

Drake's expedition in 1578.

"Here they referred to Drake's expedition in 1578, who, as they said, explored that coast on the part of England, from 37° to 48° N., making formal claim to these limits in the name of Elizabeth, and giving the name of New Albion to all the country which they comprehended. Was this, they asked, to be reputed nothing in the comparison of prior discoveries, and did it not even take in a large part of the very coast now claimed by the United States, as of prior discovery on their side?"

Mr. Rush's further reply.

Mr. Rush in reply contended, "as to Drake, although Fleurieu, in his introduction to Marchand, did assert that he got as far north as 48°, yet Hakluyt, who wrote about the time that Drake flourished, informs us that he got no higher than

43°, having put back at that point from extremity of cold. All the later authors or compilers, also, who spoke of his voyage, however they might differ as to the degree of latitude to which he went, adopted from Hakluyt this fact, of his having turned back from intensity of weather. The preponderance of probability, therefore, I alleged, as well as of authority was, that Drake did not get beyond 43° along that coast. At all events it was certain that he had made no settlements there, and the absence of these would, under the doctrine of Great Britain, as applied by her to Spain, prevent any title whatever attaching to his supposed discoveries. They were moreover put out of view by the treaty of 1763, by which Great Britain agreed to consider the Mississippi as the western boundary upon that continent."

Treaty of 1763.

He concluded with reasserting formally, "the full and exclusive sovereignty of the United States over the whole of the territory beyond the Rocky Mountains washed by the Columbia River, in manner and extent as stated, subject, of course to whatever existing conventional arrangements they may have formed in regard to it with other Powers. Their title to this whole country they considered as not to be shaken. It had often been proclaimed in the legislative discussions of the nation, and was afterwards public before the world. Its broad and stable foundations were laid in the first uncontradicted discovery of that river, both at its mouth and its source, followed up by an effective settlement, and that settlement the earliest ever made upon its banks. If a title in the United

Valley of the Columbia river.

States, thus transcendant, needed confirmation, it might be sought in their now uniting to it the title of Spain. It was not the intention of the United States, I remarked, to repose upon any of the extreme pretensions of that Power to speculative dominion in those seas, which grew up in less enlightened ages, however countenanced in those ages; nor had I, as their plenipotentiary, sought any aid from such pretensions; but to the extent of the just claims of Spain, grounded upon her fair enterprise and resources, at periods when her renown for both filled all Europe, the United States had succeeded, and upon claims of this character it had, therefore, become as well their right as their duty to insist."

British proposal.

The British plenipotentiaries, in conclusion, with a view as they said of laying a foundation of harmony between the two governments, proposed that the third article of the Convention of 1818 should now terminate. That "the boundary line between the territories respectively claimed by the two Powers, westward of the Rocky Mountains, should be drawn due west, along the 49th parallel of latitude, to the point where it strikes the north-easternmost branch of the Columbia, and thence down along the middle of the Columbia to the Pacific Ocean: the navigation of this river to be for ever free to the subjects or citizens of both nations." They remarked, "that in submitting it, they considered Great Britain as departing largely from the full extent of her right, and that, if accepted by the United States, it would impose upon her the necessity of breaking up four or five settle-

ments, formed by her subjects within the limits that would become prohibited, and that they had formed, under the belief of their full rights as British subjects to settle there. But their government was willing, they said, to make these surrenders, for so they considered them, in a spirit of compromise, on points where the two nations stood so divided."

Mr. Rush, in reply, declared his utter inability to accept such a proposal, and in return consented, "in compliance with this spirit, and in order to meet Great Britain on ground that might be deemed middle, to vary so far the terms of his own proposal, as to shift the southern line as low as 49° in place of 51°." "I desired" he writes, "it to be understood, that this was the extreme limit to which I was authorised to go; and that, in being willing to make this change, I, too, considered the United States as abating their rights, in the hope of being able to put an end to all conflict of claims between the two nations to the coast and country in dispute." Counter-proposal of the United States.

The British commissioners declined acceding to this proposal, and as neither party was disposed to make any modification in their ultimatum, the negotiation was brought to a close. Negotiations broken off.

CHAPTER XV.

EXAMINATION OF THE CLAIMS OF THE UNITED STATES.

Exclusive Sovereignty for the first Time claimed by the United States over the Valley of the Columbia.—The Statements relied upon to support this, not correct.—The Multnomah River erroneously laid down in Maps.—Willamette Settlement.—Source of the Multnomah, or Willamette, in about 43° 45′ N. L.—Clarke's River.—Source in 46° 30′.—The Northernmost Branch of the Columbia discovered and explored by Mr. Thomson.—The Pacific Fur Company not authorised by the United States Government.—The American Fur Company, chartered by the State of New York in 1809, a different Company for a different Purpose.—The Association dissolved at Astoria before the Arrival of H. B. M.'s Sloop of War the Racoon.—Protection of the National Flag.—Vattel.—Kluber.—Letter from Mr. Gallatin to Mr. Astor.—A Commission from the State required in respect of acquiring Territory.—Title by Discovery of the Mouth of a River.—Rivers Appendages to a Territory.—Vattel.—Common Use of great Rivers.—Mr. Wheaton.—Effect of the Principle to make the Highlands, not the Water-courses, the Boundaries.—Different Principle advanced by Messrs. Pinckney & Monroe, in 1805, founded on Extent of Sea Coast.—Vattel.—Charters of Georgia, Pennsylvania, and Carolina.—Crozat's Grant opposed to the Spanish Discovery of the Mississippi.—Inconvenience in applying the Principle.—Conflict of Titles.—Course of the Columbia River.—Valley of the Columbia River does not extend across the Cascade Range, on the North Side of the River.—Derivative Title of the United States from Spain.—Spanish Version, in 1790, of Encroachments by Russia.—The Russian Statement.—The Russian American Company, in 1799.—Lord Stowell.—Discoveries require Notification.—The Convention of the Escurial admitted to contain Recognitions of Rights.—Meaning of the Word "Settlements."

It will have been seen in the previous chapter that Messrs. Rush and Gallatin, in the negotiations of

1823–24, no longer confined themselves to the assertion of an imperfect right on the part of the United States, good at least against Great Britain, as in the negotiations of 1818, but set up a claim on the part of the United States, *in their own right, to absolute and exclusive sovereignty and dominion* over the whole of the country westward of the Rocky Mountains, from 42° to at least as high up as 51°. This claim they rested upon their first discovery of the River Columbia, followed up by an effective settlement at its mouth.

Claim of the United States to exclusive sovereignty.

In respect to the discovery of the river, they alleged the same facts as in 1818, namely, that Captain Gray, in the American ship Columbia, first discovered and entered its mouth, and that Captains Lewis and Clarke first explored it from its sources to the ocean. In respect to settlement, the establishment at Astoria was, as before, relied upon, having been formally surrendered up to the United States at the return of peace.

The American plenipotentiaries grounded the extent of the exclusive claim of the United States, *in their own right*, upon the fact that "it had been ascertained that the Columbia extended by the River Multnomah to as low as 42° north, and by Clarke's River to a point as high up as 51°, if not beyond that point." In the first place, then, neither of these statements are correct. The erroneous notions respecting the Multnomah River have been already alluded to in the chapter upon the Treaty of Washington. To a similar purport, in the map prefixed to Lewis and Clarke's Travels, we find the source of the Multnomah laid down in 38° 45′ north lati-

Statements, not correct.

Source of the Multnomah river.

tude, 115° 45′ west longitude from Greenwich, the river being represented to run a due north-west course, and to empty itself into the Columbia within about 140 miles of the sea. In the narrative of the expedition, Chapter XX., it is expressly stated, that they passed the mouth of this river in their way down the Columbia to the Pacific, and afterwards found it to be the Multnomah; and in Chapter XXV. it is said that "the Indians call it Multnomah from a nation of the same name, residing near it, on Wappatoo Island." This island lies in the immediate mouth of the river, dividing the channel into two parts. Now this river is the modern Willamette, which enters the Columbia from the south, about five miles below Fort Vancouver, about eighty-five miles from the sea, according to Mr. Dunn, and in the valley of this river, in a very fertile district, about fifty miles from its entrance into the Columbia, is the Willamette Settlement, where the majority of the colonists from the United States are located, though according to Commander Wilkes' account (vol. iv. chap. x. p. 349. 8vo. ed.), many of the farms belong to Canadians who have been in the service of the Hudson's Bay Company. Actual survey, as may be seen from Commander Wilkes's map, has determined that the southernmost source of the Multnomah, or Willamette, is in about 43° 45′ N.L.

The Willamette settlement.

Source of the Multnomah river.

Clarke's river.

In respect to Clarke's River, the map of Lewis and Clarke places the highest source of it in about 45° 30′, whilst Commander Wilkes' map determines it to be in about 46° 30′. It is the same as the Flathead River, and it joins the main stream of the

Columbia a little below the 49th parallel. It thus appears that neither of the rivers upon which Mr. Rush relied, supports his claim to the extent which he maintained. Had he grounded the title of the United States towards the south upon the source of the Lewis or Snake River, which he may possibly have intended to do, this would have given him the 42d parallel to commence with, and Clarke's River would have carried the claim of the United States up to very nearly 49° at its junction with the northern branch, but no higher. Lewis and Clarke saw nothing, and knew nothing, of the northernmost branch of the Columbia, which Mr. Thomson, the astronomer of the North-west Company, first explored to its junction with Clarke's River, and thence to the sea, in 1811, as already (p. 14.) detailed.

Northernmost branch of the Columbia.

In reference to the settlement of Astoria, on the southern bank of the Columbia, at its mouth, the Pacific Fur Company does not appear to have been authorised by the United States Government to make any effective settlement there. On the contrary, it is asserted by writers in the United States, who, it may be presumed, are well informed on the subject, and the Charleston Mercury of October 11. 1845, expressly asserts the fact, — "that the United States Government, though earnestly solicited by Mr. Astor, refused to authorise or sanction his expedition." Mr. Astor himself states, in his letter of January 4. 1823, to Mr. Adams, quoted by Mr. Greenhow in his Appendix, p. 441., that it was as late as February 1813, when he made an application to the Secretary of State at Washington, but no reply was given to it. In addition, although

Pacific Fur Company.

Mr. Astor, according to Mr. Washington Irving, obtained a charter from the State of New York in 1809, incorporating a company under the name of the American Fur Company, this was intended to carry on the fur trade in the Atlantic States, and was a totally distinct speculation from the Pacific Fur Company, which was not formed before July 1810, and was a purely voluntary association for commercial purposes, consisting of ten partners, of whom Mr. Astor was the chief. Of these, however, six were British subjects, who, according to Mr. Greenhow, p. 294., communicated the plan of the enterprise to the British minister at Washington, and were assured by him, "that in case of a war between the two nations they would be respected as *British subjects and merchants.*" Such a body of traders could hardly be considered to invest their settlement at Astoria with any distinct *national* character, much less to represent the sovereignty of the United States of America, so as, in taking possession of a portion of territory at the mouth of the Columbia, to acquire for the United States the *empire* or sovereignty of it, at the same time with the *domain.*

American Fur Company.

It must be kept in mind that the Pacific Fur Company was a purely voluntary association, a mercantile firm in fact, not incorporated, as the American Fur Company had been, by an Act of the Legislature of the State of New York, nor, though countenanced by the Government of the United States, as it well deserved to be, in any respect authorised by it. "The association," according to Mr. Washington Irving, "if successful,

was to continue for twenty years, but the *parties had full power to abandon and dissolve it* within the first five years, should it be found unprofitable." And thus, we find, that the association was dissolved by the unanimous act of the partners present at Astoria on the 1st of July 1813, and the establishment itself, with the furs and stock in hand, transferred by sale on the 6th of October to the North-west Company, so that when the British sloop-of-war the Racoon arrived on the 1st of December, the settlement at Astoria was the property of the North-west Company. Captain Black, however, formally took possession of Astoria in the name of his Britannic Majesty, according to the narrative of Mr. John Ross Cox, and having hoisted the British ensign, named it Fort George. There is no mention however of the flag of the United States having been struck on this occasion. Thus, indeed, the territory was for the first time taken possession of by a person "*furnished with a commission from his sovereign*," and from this time Astoria became a settlement of the British Crown, not by the rights of war, but by a national act of taking possession. At a subsequent period, however, upon the representation of the Government of the United States, the British Government, in conformity, as it was led to suppose, to the first article of the Treaty of Ghent, directed the settlement of Fort George to be restored to the United States. The British ensign was then formally struck, and the flag of the United States hoisted. By this act of cession on the part of the Crown of Great Britain, and the subsequent taking possession of the

Association dissolved at Astoria.

place by Mr. Prevost, as agent for the United States, Astoria for the first time acquired the national character of a settlement of the United States; and though the facts of the case, when better understood, might not have brought Astoria within the scope of the first article of the Treaty of Ghent, still the act of cession, having been a voluntary act on the part of the British Government, would carry with it analogous consequences to those which followed the restoration of the settlement at Nootka Sound, on the part of Spain, to Great Britain, by virtue of the first article of the Treaty of the Escurial. From this period, then, the first authoritative occupation of any portion of the Oregon territory by the United States is to be dated.

But it was alleged on the part of the United States, that the mouth of the Columbia river had been first discovered and entered by Captain Gray, a citizen of the United States, in a vessel sailing under the flag of the United States: and when it was urged by the British commissioners that the discovery was not made by a national ship, or under national authority, it was stated by Mr. Rush, that "the United States could admit no such distinction, could never surrender under it, or upon any ground, their claim to this discovery. The ship of Captain Gray, whether fitted out by the government of the United States or not, was a national ship. If she was not so in a technical sense of the word, *she was in the full sense of it applicable to such an occasion.* She bore at her stern the flag of the nation, sailed forth under the protection of the nation, and was to be identified with the rights of the nation."

Protection of the national flag.

The doctrine adduced in the above passage is not in accordance either with the practice of nations, or the principles of natural law. The occasion here contemplated was the discovery of a country with the view of taking possession of it. The practice of nations, according to Vattel, has usually respected such a discovery, when made by navigators *furnished with a commission from their sovereign*, but not otherwise; and according to Kluber, in order that an act of occupation should be legitimate, — and the same observation applies to all the acts which are accessorial to occupation, — the *state* ought to have the intention of taking possession. It may be perfectly true that a merchant vessel, sailing under the flag of a nation, is under the protection of the nation, and is to be identified with the rights of the nation, within the limits of its own proper character, that is, for all the purposes of commerce, but not beyond those limits: the flag, indeed, entitles it to all the privileges which the nation has secured to her citizens by treaties of commerce, but the ship is the property of individuals, and the captain is only the agent of the owners: he possesses no authority from the nation, unlike the captain of a vessel of the state, who is the agent of the state, and for whose acts the state is responsible towards other states. The Government of the United States, however, did not consider, about the time of these transactions at Astoria, that a trading vessel, sailing under the command of a private citizen, could claim the protection of the flag in the same sense in which a ship of the state possesses it, under the

Vattel.

command of a commissioned officer. Mr. Washington Irving has annexed, in the Appendix to his "Astoria," a letter from Mr. Gallatin himself, addressed to Mr. Astor, in August 6. 1835:—

Letter from Mr. Gallatin.

"During that period I visited Washington twice —in October or November 1815, and in March 1816. On one of these two occasions, and I believe on the last, you mentioned to me that you were disposed once more to renew the attempt, and to *re-establish* Astoria, provided you had *the protection of the American flag:* for which purpose *a lieutenant's command* would be sufficient to you. You requested me to mention this to the President, which I did. Mr. Madison said he would consider the subject; and, although he did not commit himself, I thought that he received the proposal favourably." This distinction, which the highest authorities in the United States seem at that time to have fully appreciated, between the protection of the national flag in respect of acquiring territory, and the protection of it in respect of carrying on commerce, namely, that a commission from the state is required to convey the former, whilst the latter is enjoyed at his own will by every citizen, is seemingly at variance with Mr. Rush's remarks.

The principle, however, upon which Captain Gray's discovery, on the hypothesis that it was a national discovery, was alleged to lead to such important consequences, was thus stated:—"I asserted," writes Mr. Rush, "that a nation discovering a country by entering the mouth of its principal river at the sea coast, must necessarily be allowed to claim and hold as great an extent of

Discovery of the mouth of a river.

the interior country as was described by the course of such principal river and its tributary streams." This is a very sweeping declaration, more particularly when applied to the rivers of the New World; and, in order that it should command the acquiescence of other states, it must be agreeable either to the principles of natural law, or to the practice of nations.

The principles involved in this position seem to be, that the discoverer of the mouth of a river is entitled to the exclusive use of the river; and the exclusive use of the river entitles him to the property of its banks. This is an inversion of the ordinary principles of natural law, which regards rivers and lakes as appendages to a territory, the use of which is necessary for the perfect enjoyment of the territory, and rights of property in them only as acquired through rights of property in the banks. Thus, Vattel (i. § 266.): "When a nation takes possession of a country bounded by a river, she is considered as appropriating to herself the river also: for the utility of a river is too great to admit of a supposition that the nation did not intend to reserve it for itself. Consequently, the nation that first established her dominion on one of the banks of the river is considered as being the first possessor of all that part of the river which bounds her territory. Where it is a question of a very broad river, this presumption admits not of a doubt, so far at least as relates to a part of the river's breadth: and the strength of the presumption increases or diminishes in an inverse ratio with the breadth of a river; for the narrower the

Rivers appendages to a territory.

river is, the more do the safety and convenience of its use require that it should be subject to the empire and property of a nation."

Common use of great rivers.

According to the Civil Law, rivers (flumina perennia), as distinguished from streams (rivi), were deemed public, which, like the sea shore, all might use. In an analogous manner, in reference to great rivers flowing into the ocean, a common use is presumed, unless an exclusive title can be made out, either from prescription or the acknowledgment of other states. Thus, Mr. Wheaton, in his Elements of International Law (part ii. ch. iv. § 18.), in referring to the Treaty of San Lorenzo el Real, in 1795, by the 4th article of which his Catholic Majesty agreed that the navigation of the Mississippi, from its sources to the ocean, should be free to the citizens of the United States (Martens, Traités, vi. p. 142.), Spain having become at this time possessed of both banks of the Mississippi at its mouth, observes: — "The right of the United States to participate with Spain in the navigation of the Mississippi was rested by the American Government on the sentiment, written in deep characters on the heart of man, that the ocean is free to all men, and its rivers to all their inhabitants." Thus, indeed, the use of a river is considered by Mr. Wheaton to be accessory to inhabitancy; in other words, to follow the property in the banks.

Mr. Wheaton.

The principle, however, upon which the commissioner of the United States defended his claim to attach such an extent of country to the discovery of Captain Gray, was, that it was at once *reasonable* and *moderate:* reasonable, because there must be

some rule for determining the local extent of a discovery, and none was more proper than taking the water-courses which nature had laid down, both as the fair limits of the country, and as indispensable to its use and value; moderate, because the natives of Europe had often, under their rights of discovery, carried their claims much further. As to the reasonableness of the rule, if Mr. Rush meant that rivers were the natural and most convenient boundaries of territories, this proposition would command a ready assent: but the result of the principle which he set up as to the extent of the discovery, would be to make the high-lands, and not the water-courses, the territorial limits. In respect, however, to the moderation of the principle, when the magnitude of the great rivers of America, the Amazons for example, or the Mississippi, is taken into consideration, the absolute moderation of the rule would be questionable. But its moderation was insisted upon in comparison with the extensive grants of the European sovereigns. The comparative moderation, however, of a principle will not be sufficient to give it validity as a principle of international law, if it should be not in accordance with the practice of nations.

High-lands the territorial limits.

But Mr. Monroe, under whose administration as President of the United States this principle was advanced by Mr. Rush, had, in the negotiations which he, in conjunction with Mr. Pinckney, carried on in 1805 with Spain, propounded a very different principle, viz. "that whenever any European nation *takes possession of any extent of sea coast*, that possession is understood as extending

Extent of sea-coast.

into the interior country, to the sources of the rivers emptying within that coast, to all their branches, and the country they cover, and to give it a right in exclusion of all other nations to the same."

Vattel.

Now Vattel (i. § 266.) observes,—"When a nation takes possession of a country, with a view to settle there, it takes possession of every thing included in it, as lands, lakes, rivers, &c."

Here then the title to the river is made subordinate to the title to the coast, and such is the case in the charters of the Crown of England, which Mr. Rush alludes to as confirmatory of his view.

The Georgia charter.

The Georgia Charter of 1732, for instance, of which he cites a portion, granted "all the lands and territories from the most northern stream of the Savannah river, all *along the sea coast* to the southward unto the most southern stream of the Alatamaha river, and westward *from the heads of the said rivers respectively in direct lines to the South Seas*, and all that space, circuit, and precinct of land lying *within the said boundaries*." (Oldmixon's History of the British Colonies in America, i. p. 525.)

Pennsylvania and Carolina.

The same principle is sanctioned in the grant of Pennsylvania and of Carolina, and it is perfectly reasonable: for, as the discovery has taken place from the sea, the approach to the territory is presumed to be from the sea, so that the occupant of the sea-coast will necessarily bar the way to any second comer: and as he is supposed, in all these grants, to have settled in vacant territory, he will naturally be entitled to extend his settlement over

the vacant district, as there will be no other civilised power in his way.

Mr. Rush, in order to show that Britain was not the only European nation, who, in her territorial claims on this continent, had had an eye to the rule of assuming water-courses to be the fittest boundaries, cited the charter of Louis XIV. to Crozat. But this very charter bears testimony against the principle advanced by Mr. Rush; for it is undeniable that the Spaniards discovered the mouth of the Mississippi about 1540; yet, in the face of this fact, the French King granted to Crozat all the territory between New Mexico on the west and Carolina on the east, as far as the sources of the St. Louis, or Mississippi, under the name of the Government of Louisiana, as a part of his possessions, though Spain had never ceded her title to France; on the authority, according to Messrs. Pinckney and Monroe, of the discovery made by the French of the upper part of the river, as low down as the Arkansas in 1673, and to its mouth in 1680, and of a settlement upon the sea coast in the bay of St. Bernard, by La Salle, in 1685. (British and Foreign State Papers, 1817–18, p. 327.) It was in reference to this settlement that the principle of the possession of the coast entitling to the possession of the interior country, had been propounded to Spain on the part of the United States.

Crozat's grant.

But if we examine this principle in its application, we shall find it lead to very great inconveniences. In the case of the Columbia River itself, Mr. Rush claimed the whole of the north-west coast, as far north as the 51st parallel of north

Inconvenience in applying the principle.

latitude, because the north branch of the river rises in that latitude. But the mouth of Frazer's River is in 49° N.L., so that the discoverer of the mouth of Frazer's River would be entitled to the coast above the 49th parallel, unless Mr. Greenhow means to confine the application of his principle to what is strictly the valley of the river, and this would be to make the headlands, as before remarked, the lines of territorial demarcation. This certainly would be an intelligible rule, whilst any other interpretation of his meaning would lead to an endless conflict of titles. For otherwise, as observed, the discoverer of the mouth of Frazer's River would clash with the discoverer of the mouth of the Columbia River, as Frazer's River extends from 54° 20° to 49°, and the discoverer of the Salmon River, which rises in about 53°, and, after pursuing a northward course, empties itself into the sea a little below 54°, would clash with the discoverer of the mouth of Frazer's River. Mr. Rush's principle seems to assume that all the main rivers of a country pursue a parallel course, and that all the great valleys and mountain ranges are conformable, which however is not the case. Thus the Columbia, after following for some time, in a southward direction, a parallel course to Frazer's River, is suddenly turned aside to the west by the Blue Mountains, which it meets in about 46° N.L., and arriving at a gap in the Cascade range, finds its way at once to the sea along that parallel, instead of forming a great lake between the Cascade and Blue Mountains, and ultimately working its way out where the Klamet at present empties

Conflict of titles.

The Columbia River.

itself into the Pacific. Mr. Rush's principle, therefore, does not seem to recommend itself by its convenience; but, assuming for a moment that it is a recognised principle of international law, that a "nation discovering a country by entering the mouth of its principal river at the sea coast, must necessarily be allowed to claim and hold as great an extent of the interior country as was described by the course of the principal river and its tributary streams," the United States would only be entitled to the valley of the Columbia River, to the country watered by the river itself, and its tributaries: it could not claim to come across the Cascade range on the northern side of the Columbia, to cross the highlands which turn off the waters on their eastern side into the Columbia, and on their western side into Admiralty Inlet; yet, by virtue of the first entrance by Gray of the mouth of the Columbia River, the United States claim, "in their own right, and under their absolute and exclusive sovereignty and dominion, the whole of the country west of the Rocky Mountains, from the 42d to at least as high up as the 51st degree of north latitude."

Valley of the Columbia.

Such were the grounds on which the original title of the United States was set up; her derivative title on this occasion was founded upon the cession of the title of Spain by the Treaty of Washington. In support of the Spanish title, Mr. Rush alleged that "Russia had acknowledged it in 1790, as the State Papers of the Nootka Sound controversy would show. But the memorial of the Court of Spain simply states, that in reply to the remon-

Derivative title.

Russian encroachments.

strance of Spain against the encroachments of Russian navigators within the limits of Spanish America (limits situated within Prince William's Strait), Russia declared "that she had given orders that her subjects should make no settlement in places belonging to other Powers, and that if those orders had been violated, and any had been made in Spanish America, she desired the King would put a stop to them in a friendly manner." (Annual Register, 1790, p. 295.) But Russia did not acknowledge the limits of Spanish America, as set up by Spain; on the contrary, we find M. de Poletica, the Russian Minister at Washington, in his letter to Mr. Adams of the 28th February 1822, distinctly asserting that Russian navigators had pushed their discoveries as far south as the forty-ninth degree of north latitude in 1741, and that in 1789 there were Russian colonies in Vancouver's island, which the Spanish authorities did not disturb, and that Vancouver found a Russian establishment in the Bay of Koniac. (British and Foreign State Papers, 1822–23.) Vancouver himself states, that he found a settlement of about one hundred Russians at Port Etches, on the eastern side of Prince William's Sound, and M. de Poletica, in his negotiations with Mr. Adams, maintained the authenticity of the statement in the two official letters preserved in the Archives of the Marine at Paris, which report that in 1789 Captain Haro, in the Spanish packet St. Charles, found a Russian settlement in the latitude of 48° and 49°. (State Papers, 1825–26, p. 500.) Fleurieu, the French hydrographer, considers these numbers to be erroneous, and that 58°

Russian statements.

and 59° ought to be read; but he gives no other reason than that the English traders had fully ascertained that the Russians had no establishment to the south of Nootka Sound, which is between 49 and 50 degrees. So far, at least, were the Russians from practically recognising the title of Spain up to 60° north latitude, that in 1799 the Emperor Paul granted to the Russian American Company the exclusive enjoyment of the north-west coast as far south as 55° north lat., in virtue of the discovery of it by Russian navigators, and authorised them to extend their discoveries to the south of 55°, and to occupy all such territories as should not have been previously occupied and placed under subjection by any other nation. (Greenhow, p. 333.) It was further urged by Mr. Rush, that Spain had expressly asserted in 1790, that her territories extended as far as the 60th degree of north latitude; and that she had always maintained her possessions entire, notwithstanding attempted encroachments upon them. This, however, was not admitted by the British Minister at the Court of Madrid: moreover, it was by implication denied in the very first article of the treaty, by which it was stipulated that the buildings and tracts of land on the north-west coast of America, or on islands adjacent to the continent, of which the subjects of his Britannic Majesty had been *dispossessed* about the middle of April 1789, by the Spaniards, should be restored to the said British subjects. Again, it was contended by Mr. Rush, that "any claim on the part of Great Britain, under the voyage of Captain Cook, was

Russian American Company.

sufficiently superseded (passing by every thing else) by the Journal of the Spanish expedition from San Blas, in 1775, kept by Don Antonio Maurelle, and published by Daines Barrington, a British author," in his Miscellanies. It is, however, quite a novel view of the law of nations, that a *clandestine* discovery should be set up to supersede a *patent* discovery, notified to all the world by the authoritative publication of the facts. Thus Lord Stowell, in the case of the Fama (5 Robinson's Reports, 115.) says, "In newly-discovered countries, where a title is meant to be established for the first time, some act of possession is usually done, and *proclaimed as a notification of the fact.* In a similar manner, in the case of *derivative* title, it is a recognised rule of international law, that sovereignty does not pass by the mere words of a treaty, without actual delivery. When stipulations of treaties," observes Lord Stowell, "for ceding particular countries are to be carried into execution, solemn instruments of cession are drawn up, and adequate powers are *formally* given to the persons by whom the actual delivery is to be made. In modern times more especially, such a proceeding is become almost a matter of necessity, with regard to the territorial establishments of the states of Europe in the New World. The treaties by which they are affected may not be known to them for many months after they are made. Many articles must remain *executory* only, and not executed till carried into effect; and until that is done by *some public act, the former sovereignty must remain.*" In illustration of the practice of nations being in accordance with this principle, that

Lord Stowell.

Discoveries require notification.

eminent judge cited the instances of the cession of Nova Scotia to France in 1667, of Louisiana to Spain in 1762, and of East Florida to Spain in 1803, in all of which cases the sovereignty was held not to have passed by the treaty, but by a subsequent formal and public act of notification. Claims of territory are claims of a most sacred nature, and, as as the case of vacant lands, a claim of discovery by one nation is to supersede and extinguish thenceforward the rights of all other nations to take possession of the country as vacant, the reason of the thing requires that the newly-acquired character of the country should be indicated by some public act. Thus Mr. Greenhow (p. 116.) observes, that the Government of Spain, by its silence as to the results of the expedition of Perez in 1774, deprived itself "of the means of establishing, beyond question, his claim to the discovery of Nootka Sound, which is now, by general consent, assigned to Captain Cook."

Convention of the Escurial.

In this conference, the Convention of the Escurial, or, as it was termed, the Nootka Sound Convention, was introduced by Mr. Rush, in accordance with the express instructions of the United States Government. Mr. Greenhow seems to consider that this was an impolitic step on the part of the United States, as they thereby admitted it to be a subsisting treaty. Mr. Rush certainly maintained that the convention contained *recognitions of rights*, such as the exclusive colonial rights of Spain, but he further contended that, "whilst, by it, the nations of Europe generally were allowed to make settlements on that coast, *it was only for the purposes of*

Recognitions of rights.

the trade with the natives, thereby excluding the right of any exclusive or colonial establishments for other purposes." To the same purport Mr. Greenhow (p. 340.) in a note says, "The principles settled by the Nootka Sound Convention were:—

"1st. That the rights of fishing in the South Seas; of trading with the natives of the north-west coast of America; and *of making settlements on the coast itself, for the purposes of that trade*, north of the actual settlements of Spain, were common to all the European nations, and of course to the United States."

This view, however, of the purport of the Convention of the Escurial, falls short of the full bearing of the 3rd article, which is the one alluded to; by which it was agreed, "that their respective subjects shall not be disturbed or molested, either in navigating or carrying on their fisheries in the Pacific Ocean, or the South Seas, or in landing on the coasts of those seas, in places not already occupied, for the purpose of carrying on their commerce with the natives of the country, or *of making settlements* there." There is no restriction here as to the object of the settlement: on the contrary, *the making settlements* is specified as distinct *from the landing on the coast for the purposes of trade*. It is obvious that, if the intention of the framers of the convention had been such as asserted by Mr. Rush, they would have worded the article otherwise, viz. "or in landing on the coasts of those seas, or in making settlements there, in places not already occupied, for the purpose of carrying on their commerce with the natives of the country." The argument, therefore, advanced

by Mr. Rush, must, upon the face of the words of it, be held to give an imperfect view of the rights mutually acknowledged by the Treaty of the Escurial.

But the meaning of the word "settlement" in the treaty will be obvious, if either the antecedent facts, or the antecedent negotiations, are regarded. In the memorial of the Court of Spain (Annual Register, 1790, p. 295.), it is stated, that before the visit of Martinez to Nootka, Spain did not know that the English had endeavoured *to make settlements* on the northern parts of the Southern Ocean, though she had been aware of trespasses made by the English on some of the islands of those coasts. Martinez, on arriving at Nootka, had found two American vessels (the Columbia and Washington), but as it appeared from their papers that they were driven there by distress, and only came in there to refit, he permitted them to proceed upon their voyage.

Memorial of the Court of Spain.

"He also found there the Iphigenia from Macao, under Portuguese colours, which had a passport from the Governor; and though he (the captain) came manifestly with a view to trade there, yet the Spanish Admiral, when he saw his instructions, gave him leave to depart, upon his signing an engagement to pay the value of the vessel, should the Government of Mexico declare it a lawful prize.

"With this vessel there came a second (the North-west America), which the Admiral detained and a few days after a third, named the Argonaut, from the above-mentioned place. The captain (Colnett) of this latter was an Englishman. He came not *not only to trade*, but brought every thing

with him proper *to form a settlement there* and to fortify it. This, notwithstanding the remonstrances of the Spanish Admiral, he persevered in, and was detained, together with his vessel.

"After him came a fourth English vessel, named the Princess Royal, and evidently *for the same purposes*. She likewise was detained, and sent into Port St. Blas, where the pilot of the Argonaut made away with himself."

Colnett's instructions.

What these purposes were, is more fully shown from the letter of instructions which Capt. Colnett carried with him, and which is to be found in the Appendix to Meares' Voyages, having been annexed to Meares' Memorial.

"In planning a factory on the coast of America, we look to *a solid establishment*, and not one that is to be abandoned at pleasure. We authorise you to fix it at the most convenient station, only to place *your colony* in peace and security, and fully protected from the fear of the smallest sinister accident. The object of a port of this kind, is to draw the Indians to it, to lay up the small vessels in the winter season, to build, and for other commercial purposes. When this point is effected, different trading houses will be established at stations, that your knowledge of the coast and its commerce point out to be most advantageous."

That the avowed object of Capt. Colnett's expedition was in conformity with these instructions is confirmed by the letter which Gray, the captain of the Washington, and Ingraham, the mate of the Columbia, both of them citizens of the United States, addressed to the Spanish commandant

from Nootka Sound in August 3. 1792, and which Mr. Greenhow has published in his Appendix (p. 416.):—"It seems Captain Meares, with some other Englishmen at Macao, had concluded *to erect a fort and settle a colony* in Nootka Sound; from what authority we cannot say. However, on the arrival of the Argonaut, we *heard Captain Colnett inform the Spanish commodore he had come for that purpose*, and to hoist the British flag, take formal possession, &c.; to which the commodore answered, he had taken possession already in the name of his Catholic Majesty; on which Capt. Colnett asked, if he would be prevented from building a house in the port. The commodore, mistaking his meaning, answered him he was at liberty to erect a tent, get wood and water, &c., after which, he was at liberty to depart when he pleased; but Capt. Colnett said, that was not what he wanted, but to build a block-house, erect a fort, and *settle a colony* for the Crown of Great Britain. Don Estevan José Martinez answered, *No;* that in doing that, he should violate the orders of his king, run a risk of losing his commission, and not only that, but it would be relinquishing the *Spaniards' claim to the coast;* besides, Don Martinez observed, *the vessels did not belong to the King*, nor was he intrusted with powers to transact such public business. On which Capt. Colnett answered, he was a king's officer: but Don Estevan replied, his being in the navy was of no consequence in the business." Gray and Ingraham's statement.

The authorised Spanish account in the Introduction of the Voyage of Galiano and Valdés (p. cvii.), Authorized Spanish account.

is in perfect harmony with the contemporaneous American statement. Mr. Greenhow has quoted a portion of it in a note to his work (p. 197.), which may be referred to more conveniently than the Spanish original, of which the following is a translation:—"There entered the same port, on the 2d of July, the English packet-boat Argonaut, despatched from Macao by the English Company. Her captain, James Colnett, was furnished with a license from the King of England, authorising him (iba autorizado con ordenes des Rey) *to take possession of the Port of Nootka, to fortify himself in it, and to establish a factory* for storing the skins of the sea-otter, and to preclude other nations from engaging in that trade, with which object he was to build a large ship and a schooner. So manifest an infringement *of territorial rights* led to an obstinate contest between the Spanish commandant and the English captain, which extended to Europe, and alarmed the two Powers, threatening them for some time with war and devastation, the fatal results of discord. Thus a dispute about the possession of a narrow territory, inhabited only by wretched Indians, and distant six thousand navigable leagues from Europe, threatened to produce the most disastrous consequences to the whole world, the invariable result, when the ambition or vanity of nations intervenes, and prudence and moderation are wanting in contesting rights of property."

Spain, at the commencement of the negotiations, expressly required through her ambassador at the Court of London, on February 10. 1790, "that

the parties who had planned these expeditions should be punished, in order to deter others *for making settlements on territories occupied* and frequented by the Spaniards for a number of years." Great Britain, in undertaking that her subjects should not act against the just and acknowledged rights of Spain, maintained for them an indisputable right to the enjoyment of a free and uninterrupted navigation, commerce, and fishery, and to the possession of such *establishments* as they should form with the consent of the natives of the country, *not previously occupied* by any of the European nations. The word "establishment" here made use of is synonymous with "settlement," *établissement* being the expression in the French version of the treaty wherever *settlement* occurs in the English version. Both these terms have a recognised meaning in the language of treaties, of a far wider extent than that to which Mr. Rush sought to limit the language of the Convention of the Escurial. In the convention itself the word "settlement" is applied, in the 4th article, to the Spanish colonies; in the 5th, it is applied to the parts of the coast occupied by the subjects of either Power since 1789, or hereafter to be occupied; in the 6th, to the parts of the coast which the subjects of both Powers were forbidden to occupy. There is nothing in the context to warrant the supposition that the usual meaning was not to be attached to the word "settlement" on this occasion, namely, a *territorial settlement*, such as is contemplated in the 3d article of the Treaty of 1783: "and that the American fishermen shall

Settlement equivalent to Colony.

have liberty to dry and cure fish in any of the *unsettled* bays, harbours, and creeks of Nova Scotia, Magdalen Islands, so long as the same shall remain unsettled : but so soon as the same, or either of them, shall be *settled*, it shall not be lawful for the said fishermen to dry or cure fish at such *settlement* without a previous agreement with *the inhabitants, proprietors, or possessors of the ground.*

In the same manner, during the negotiations of 1818, *the settlement at the mouth of the Columbia River* was the term applied by Mr. Rush to Astoria. During the discussions between Spain and the United States prior to the Florida Treaty, the *settlement* in the Bay of St. Bernard, is the appellation given to the French colony of La Salle; and in Crozat's grant the word *établissemens* is similarly employed. That "settlement" is not the received expression in the language of diplomatists for temporary trading stations, may be inferred from a single instance in the Treaty of 1794, by the second article of which it was provided,—"the United States, in the mean time, at their discretion extending their *settlements* (leurs établissemens) to any port within the said boundary line, except within the precincts or *jurisdiction* of any of the said posts. All *settlers* and *traders* within the said posts (tous les colons et commerçans établis dans l'enceinte et la jurisdiction des dites postes) shall continue to enjoy unmolested all their property of every kind, and shall be protected therein."

Treaty of 1794.

One instance more will suffice. Treaties must be construed in accordance with the received and ordinary meaning of the language, unless

otherwise specified, especially when it is sought to attach an unusual sense to any particular term, which sense is ordinarily expressed by some other well-known term. Thus, the 11th article of the Treaty of Paris serves to show, that a station exclusively for the purposes of trade with the natives is not termed a settlement, or *établissement*, but a factory, or *comptoir*. "In the East Indies Great Britain shall restore to France, in the conditions they are now in, the different *factories* (les différens comptoirs) which that crown possessed, as well on the coast of Coromandel and Orisca as on that of Malabar, as also Bengal, at the beginning of the year 1740." (Jenkinson's Collection of Treaties, vol. ii. p. 185.; Martens' Traités, i. p. 112.)

Treaty of Paris.

In remarkable contrast to this we find in the convention of commerce between Great Britain and the United States, signed at London, July 3. 1815, the following words in the third article:— "His Britannic Majesty agrees that the vessels of the United States of America shall be admitted and hospitably received at the principal *settlements* of the British dominions in the East Indies, viz., Calcutta, Madras, Bombay, and Prince of Wales' Island, and that the citizens of the said United States may freely carry on trade between the said principal *settlements* and the said United States." In this latter case it is no longer trading ports, but territorial establishments which are spoken of, and the word *settlements* is distinctively applied to them.

Commercial Treaty of 1815.

CHAPTER XVI.

NEGOTIATIONS BETWEEN THE UNITED STATES AND GREAT BRITAIN IN 1826–27.

Revival of Negotiations.—Written Statements of respective Claims.—The United States. — Great Britain. — Rights supposed to be derived from the Acquisition of Louisiana.—Jefferys' French America. — Cession of Canada. — The Illinois Country. — Treaty of Utrecht. Treaty of Paris. — French Maps. — Charters. — Declaration of Court of France in 1761, as to respective Limits of Canada and Louisiana. — Contiguity of Territory. — Hudson's Bay Territories. — Atlantic Colonies. — Cession by France of the left Bank of the Mississippi.—Mr. Gallatin's Doctrine of Contiguity. — Assumptions not admissible. — Claim to an exclusive Title by Contiguity. — Argument from Numbers. — Derivative Title from Spain. — Meaning of the Word "Settlement" in the Treaty of the Escurial. — Mr. Gallatin's Doctrine respecting "Factories."—Intermixed Settlements not incompatible with distinct Jurisdiction.—The Convention contained a mutual Recognition of Rights. — General Law of Nations may be appealed to as supplementary to the Treaty.—Priority of Settlement. — Vattel. — Territory in use never granted for the Purpose of making Settlements. —Treaty of Paris. — Usufructuary Right. — Settlements not to be disturbed. — Territory in chief not reserved. — Convention of 1827.

Revival of negotiations.

THE subject of a definitive arrangement of the respective claims of the two nations to the country west of the Rocky Mountains, the sovereignty over which had been placed in abeyance for ten years by the Convention of 1818, was once more revived in 1826, on the arrival in London of Mr. Gallatin, with full powers from the United States to resume the discussion. The British commissioners renewed

their former proposal of a boundary line drawn along the 49th parallel from the Rocky Mountains to M'Gillivray's River, the north-eastern branch of the Columbia, and thence along that river to the Pacific Ocean, and subsequently "tendered in the spirit of accommodation the addition of a detached territory on the north side of the river, extending from Bulfinch's (Gray's or Whidbey's) Harbour on the Pacific, to Hood's Canal on the Straits of Fuca. Mr. Gallatin, on his part, confined himself to the previous offer of the 49th parallel to the Pacific, with the free navigation to the sea of such branches of the Columbia as the line should cross at points from which they are navigable by boats. The claims of the two nations were on this occasion formally set forth in written statements, and annexed to the protocol of the sixth and seventh conferences respectively. They were published with President Adams' Message to Congress of December 12. 1827, and are both inserted in full in the *second* edition of Mr. Greenhow's History, lately published. The British statement alone was published in his first edition, but the United States counter-statement, a very able paper, which was a great desideratum, has been annexed to the second edition.

Written statements.

It is much to be regretted that so interesting a collection of state papers as the documents of Congress contain, are almost inaccessible to the European reader, since a complete collection is not to be met with in any of our great public libraries in England or France — those of the British Museum, for example, and of the Chamber of Deputies, having been in vain consulted for this purpose. It was intended

to annex both the written statements on this occasion in an Appendix to the present work, but the recent publication of the negotiations of 1844–5, has rendered this step unnecessary.

The United States.

On this occasion Mr. Gallatin grounded the claims of the United States—first of all upon their acquisition of Louisiana, as constituting a strong claim to the westwardly extension of that province over the *contiguous* vacant territory, and to the occupation and sovereignty of the country as far as the Pacific Ocean; and, secondly, on the several discoveries of the Spanish and American navigators. These distinct titles, it was maintained, "though in different hands they would conflict with each other, being now united in the same Power, supported each other. The possessors of Louisiana might have contended, on the ground of contiguity, for the adjacent territory on the Pacific Ocean, with the discoveries of the coast and of its main rivers. The several discoveries of the Spanish and American navigators might separately have been considered as so many *steps in the progress of discovery, and giving only imperfect claims to each party.* All these various claims, from whatever consideration derived, are now brought united against the pretensions of any other nation."

"These united claims," it was urged, "established a stronger title to the country above described, and along the coast as far north, at least, as the 49th parallel of latitude, than has ever, at any former time, been asserted by any nation to vacant territory."

The British commissioners, Messrs. Huskisson

and Addington, on their part, maintained that the titles of the United States, if attempted to be combined, destroyed each other—if urged singly, were imperfect titles. Great Britain claimed *no exclusive sovereignty* over any portion of the territory. As for any exclusive Spanish title, that was definitively set at rest by the Convention of Nootka, and the United States necessarily succeeded to the limitations by which Spain herself was bound. In respect to the French title, Louisiana never extended across the Rocky Mountains westward, unless some tributary of the Mississippi crossed them from east to west; but assuming that it did even extend to the Pacific, it belonged to Spain equally with the Californias, in 1790, when she signed the Convention of Nootka; and also subsequently, in 1792, when Gray first entered the mouth of the Columbia. If then Louisiana embraced the country west of the Rocky Mountains, to the south of 49°, it must have embraced the Columbia itself, and consequently Gray's discovery must have been made in a country avowedly already appropriated to Spain; and if so appropriated, necessarily included, with all other Spanish possessions and claims in that quarter, in the stipulations of the Nootka Convention."

Great Britain.

As the rights supposed to be derived from the acquisition of Louisiana were on this occasion for the first time set up by the United States, and formed a leading topic in Mr. Gallatin's counter-statement, their novelty, as well as the important consequences attempted to be deduced from them, entitled them to precedence in the order of inquiry over the derivative Spanish title, and the original

Acquisition of Louisiana.

title of the United States, the more so, as the two latter have been already briefly examined. It would seem that Mr. Gallatin did not attempt to extend the boundaries of the colony of Louisiana, beyond the valley of the Mississippi and its tributaries. Crozat's grant would of itself be evidence against any extension of the French title in this respect. But he contended, that "by referring to the most authentic French maps, New France was made to extend over the territory drained by rivers entering into the South Seas. The claim to a westwardly extension to those seas was thus early asserted, as part, not of Louisiana, but of New France. The King had reserved to himself, in Crozat's grant, the right of enlarging the government of Louisiana. This was done by an ordonnance dated in the year 1717, which annexed the Illinois to it, and from that time, the province extended as far as the most northern limit of the French possessions in North America, and thereby west of Canada or New France. The settlement of that northern limit still further strengthens the claim of the United States to the territory west of the Rocky Mountains."

Westwardly extension of New France.

The meaning of this passage is rather obscure, but it seems to imply, that by the annexation of the Illinois the province of Louisiana was extended to the most northern limit of the French possessions in North America, and *thereby* cut off the western portion of Canada or New France, and so consequently extended itself to the South Seas. If this be the correct view of the argument, then it may be confidently asserted, that neither of these

positions can be established. In the first place, Crozat's grant, on which the United States expressly and formally relied in the negotiations with Spain, defined the country of Louisiana to be bounded on the west by New Mexico, on the east by Carolina, and northwards to comprise the countries along the River St. Louis (Mississippi) from the sea-shore to the Illinois, together with the River St. Philip, formerly called the Missouries River, and the St. Jerome, formerly called Wabash, with all the countries, territories, lakes in the land, and the rivers emptying directly or indirectly into *that part* of the river St. Louis. The words of the grant, if strictly interpreted, limit the province on *both sides* of the Mississippi to *that part from the sea shore to the Illinois*, as both the Missouri and the Wabash (Ohio) unite with the Mississippi below the Illinois. But it seems to have been practically held, that Louisiana extended along the western bank of the Mississippi to its source. Thus we find in Jefferys' History of the French Dominions in America, published in 1760, Louisiana thus described:—"The province of Louisiana, on the southern part of New France, extends, according to the French geographers, from the Gulf of Mexico in about 29° to near 45° north lat. on the western side, (the sources of the Mississippi being laid down in Jefferys' map in about 45°), and to near 39° on the eastern, and from 86° to near 100° W. longitude from London. It is bounded on the north by Canada, on the east by the British colonies of New York, Pennsylvania, Maryland, Virginia, North and South Carolina, Georgia, and by the

The country of Louisiana.

Jefferys' French America.

peninsula of Florida; on the south by the Gulf of Mexico; and lastly, on the west by New Mexico." This description evidently omits the Illinois, but the annexation of the Illinois in 1717, did not give to the province of Louisiana the indefinite extent northward which Mr. Gallatin suggests, for the Marquis de Vaudreuil, in ceding the province of Canada to Sir J. Amherst, in 1760, according to his own letter, (Annual Register, 1761, p. 168.), expressly described Louisiana as extending on the one side to the carrying-place of the Miamis, and on the other to the head of the river of the Illinois.

Cession of Canada.

The Illinois country.

The Illinois country itself was a limited district, watered by a river of that name, which had been so called from an Indian nation settled on its banks. This tribe or nation was said to have migrated from the west, along the banks of the Moingona (the Rivière des Moines), down to its junction with the Mississippi: it had then established itself a little lower down on the eastern side of the Mississippi, in an exceedingly fertile valley, watered by a tributary of that river, to which it gave its own name of Illinois.

The French settlement was in this district, according to Jefferys: its commodious situation enabled it to keep up the communication between Canada and Louisiana, and the fertility of the soil rendered it the granary of Louisiana. It may be perfectly true that Illinois was the most northern limit of the French *possessions* in North America, if by the term *possessions* is meant the territory in which they had made settlements; but if the term is intended to include the territory in which

they claimed a right to found settlements, the statement would not be correct.

By the Treaty of Utrecht, the British had precluded themselves from passing over the limits of the territory of the bay of Hudson, and all the country south of those limits would be considered amongst "the places appertaining to the French," in other words, would be part of New France. But the southern boundary of the Hudson's Bay territory would be much to the northward of the Illinois country; the intermediate district, it is true, was peopled with various Indian tribes, but the French, as against Great Britain, by the Treaty of Utrecht, had an exclusive title to the country. By the Treaty of Paris in 1763, that title passed from France to Great Britain, and in pursuance of the rights so acquired by the crown of England, a proclamation was issued, reserving to the Indians, as hunting grounds, all the territories not included within the government of Quebec, or the limits of the territory granted to the Hudson's Bay Company, and enjoining all persons whatever, who should have seated themselves in them, to remove forthwith from such settlements. (Annual Register, 1763, p. 212.) It would thus appear, if New France ever extended across the continent of America to the Pacific Ocean, the portion of it north of the sources of the Mississippi, and of the Illinois River, passed into the hands of Great Britain, on the ratification of the Treaty of Paris. The claim, however, to the westwardly extension of New France to the Pacific Ocean, requires some better evidence than the maps of the French geographers. A map can

Treaty of Utrecht.

Treaty of Paris.

French maps.

furnish no proof of territorial title: it may illustrate a claim, but it cannot prove it. The proof must be derived from facts, which the law of nations recognises as founding a title to territory. Maps, as such, that is, when they have not had a special character attached to them by treaties, merely represent the *opinions of the geographers* who have constructed them, which opinions are frequently founded on fictitious or erroneous statements: e. g., the map of the discoveries in North America, by Ph. Buache and J. N. de Lisle, in 1750, in which portions of the west coast of America were delineated in accordance with De Fonte's story (supra, Ch. IV.), and the maps of north-west America at the end of the seventeenth and beginning of the eighteenth centuries, which represent California as lately ascertained to be an island. An examination of the collection in the King's Library at the British Museum, will remove all scepticism on this head. Such documents are entitled, of themselves, to far less consideration from foreign Powers, than the charters of sovereigns. These, indeed, may be binding on the subjects of the sovereigns by their own inherent authority, but against other nations, they must be supported expressly, on the face of them at least, by some external authority, which the law of nations acknowledges. Thus, we find generally the title of discovery recited in the preamble of charters; it is, however, competent for other nations to dispute this title, or to dispute the extent to which the grant goes. The charter of Carolina and Georgia, elsewhere recited, will furnish a case in

Charters.

point. In these the grant extends westward to the South Seas, but this would convey no title to the settlers against the French, who barred the way to the South Seas by their settlements in Louisiana, and who would dispute the asserted claim, so that the charters would be inoperative in their full extent.

But when Mr. Gallatin stated, that from the ordonnance of 1717 the province of Louisiana extended as far as the most northern limit of the French possessions in North America, and thereby west of Canada or New France, he has probably overlooked the words of the ultimatum of the Court of France, of the 5th August 1761, remitted by the Duc de Choiseul to Mr. Stanley, the British plenipotentiary, in the course of the negotiations in that year after the surrender of Canada: — "The King of France has, in no part of his memorial of propositions, affirmed that *all which did not belong to Canada appertained to Louisiana;* it is even difficult to conceive such an assertion could be advanced. France, on the contrary, demanded that the intermediate nations between Canada and Louisiana, as also between Virginia and Louisiana, shall be considered as neutral nations, independent of the sovereignty of the two crowns, and serve as a barrier between them." (Historical Memorial of the Negotiations, published at Paris by authority, 1761. May be referred to in Jenkinson's Coll. of Treaties, vol. ii.) Mr. Gallatin says elsewhere, in alluding to royal charters: — "In point of fact, the whole country drained by the several rivers emptying into the Atlantic Ocean, the mouths of which

French declaration in 1761.

were within those charters, has from Hudson's Bay to Florida, and it is believed without exception, been occupied and held by virtue of those charters. Not only has this principle been fully confirmed, but it has been notoriously enforced, much beyond the sources of the rivers on which the settlements were formed. The priority of the French settlements on the rivers flowing westwardly from the Alleghany Mountains into the Mississippi, was altogether disregarded; and the rights of the Atlantic colonies to extend beyond those mountains, as growing out of the *contiguity of territory*, and as asserted in the earliest charters, was effectually and successfully enforced." In reply to these remarks it may be observed, that the limits of the Hudson's Bay territory were settled by the Treaty of Utrecht, in 1713, those of the Atlantic colonies by the Treaty of Paris, 1763, and in the preliminary negotiation no allusion is any where made to rights founded on charters, or to rights of *contiguity*. On the contrary, in regard to the Hudson's Bay territories, the peaceable acquiescence of the Marquis de Frontenac, then Governor of Canada, in the settlement of the Bay of Hudson by the English company, was maintained to be a bar to any claims on the part of the French to question, at a subsequent period, the title which the British crown asserted on the grounds of *discovery*. Again, in respect to the Atlantic colonies, their right to extend themselves to the banks of the Mississippi was never enforced against the French, "as growing out of the contiguity of territory, and as asserted in the earliest charters. On the con-

Hudson's Bay territories.

Atlantic colonies.

trary, in the negotiations of 1761, it was admitted by Great Britain, that in respect to the course of the Ohio, and the territories in those parts, the pretensions of the two crowns had been *contentious* before the surrender of Canada, and in respect to the nations on the east bank of the Mississippi, Great Britain confined herself to asserting that they had been always reputed to be under her protection, and proposed to the French King, that "for the advantage of peace, he should consent to leave the intermediate countries under the protection of Great Britain, and particularly the Cherokees, the Creeks, the Chicosaws, the Chactaws, and another nation, situate between the *British settlements and the Mississippi.*" The result of these and subsequent negotiations was, that France, by the seventh article of the Treaty of Paris, agreed that the limits of the British and French territories respectively should be fixed by a line drawn along the middle of the Mississippi, from its source to the River Iberville [depuis sa naissance jusqu'à la rivière d'Iberville], and ceded to Great Britain all that she possessed or was entitled to possess, on the left bank of the Mississippi, with the exception of New Orleans.

Cession by France.

This cession by France of all that she possessed, or was entitled to possess, on the left bank of the River Mississippi, would convey to Great Britain all her title to the Illinois and other districts north of the Illinois country, if she possessed any; but she could only possess any title to them as forming part of the dependencies of Canada or New France. Out of these, indeed, the province of

Louisiana had been carved by the grant to Crozat in 1712, and from these the Illinois territory had been detached in 1717, by the charter of Law's Mississippi Company; the remainder, such as it was, had retained its original character of New France or Canada unchanged, as well as its original limits, such as they had been determined to be, either by special commissioners, in pursuance of the provisions of the Treaty of Utrecht, or by an understanding between the crowns of France and Great Britain. If therefore the French had any possessions in America, north of the sources of the Mississippi, as Louisiana did not extend further north than those sources, they must have been part of the original province of Canada, and have been ceded to Great Britain with Canada and all her dependencies. The western boundary of Louisiana was never attempted to be extended by the French beyond the limits of Crozat's grant, by which Louisiana was expressly defined to be bounded by New Mexico on the west, and impliedly by the head-waters of the Missouri river.

Doctrine of contiguity.

"The actual possession," Mr. Gallatin maintained, "and populous settlements of the valley of the Mississippi, including Louisiana, and now under one sovereignty, constitute a strong claim to the westwardly extension of that province over the *contiguous* vacant territory, and to the occupation and sovereignty of the country as far as the Pacific Ocean. If some trading factories on the shores of Hudson's Bay have been considered by Great Britain as giving an exclusive right of occupancy as far as the Rocky Mountains; if the infant settle-

ments on the more southern Atlantic shores justified a claim thence to the South Seas, and which was actually enforced to the Mississippi, that of the millions already within the reach of those seas cannot consistently be resisted. For it will not be denied that the extent of contiguous territory, to which an actual settlement gives a prior right, must depend, in a considerable degree, on the magnitude and population of that settlement, and on the facility with which the vacant adjoining land may, within a short time, be occupied, settled, and cultivated by such population, as compared with the probability of its being thus occupied and settled from another quarter."

Assumptions not admissible.

In examining Mr. Gallatin's argument in the above passage, it will be seen that he assumes, as the foundation of it, two suppositions as to the Hudson's Bay factories and the settlements on the Atlantic shores, which are not admissible. Great Britain never considered her right of occupancy up to the Rocky Mountains to rest upon the fact of her having established factories on the shores of the Bay of Hudson, i. e., upon her title by mere settlement, but upon her title by discovery confirmed by settlements, in which the French nation, her only civilised neighbour, acquiesced, and which they subsequently recognised by treaty: and in regard to the infant settlements on the Atlantic shores, they were planted there either by virtue of discovery, as in the case of Virginia, or else upon the plea of the territory "not yet being cultivated and planted, and only inhabited by some barbarous people," as in the case of the Carolinas, which,

though occupied successively for a time by Spanish and by French settlers, had been abandoned by all European nations from the year 1567 till 1663, when Charles II. granted letters patent to the Earl of Clarendon and seven others, asserting a title to it by virtue of the discoveries of Sebastian Cabot, and its abandonment by other Powers. If, therefore, the British crown asserted a right of extending its settlements beyond the heads of the rivers emptying themselves into the Atlantic to the South Seas, it was not by virtue of its infant settlements, but by the same title, whatever it might be, which, according to the practice of nations, would authorise it to make those settlements, since the claim was asserted in the very charters which empowered the settlement to be made. But the settlement was limited to lands "not yet cultivated or planted," in other words, to *vacant territory*. Was the claim then actually enforced by the British to the Mississippi? The history of the Treaty of Paris furnishes a negative answer to the question. The claim, indeed, which Mr. Gallatin attempts to set up, is to an *exclusive title by contiguity*. But such a title can only be founded on necessity, when the law of self-preservation is paramount to all other considerations. Convenience alone will not establish an absolute title, though it may found a conditional title, subject to the acquiescence of other States: but the reason which Mr. Gallatin alleged in support of the title by contiguity; namely, the facility with which the vacant territory would be occupied by the teeming population of the United States, is but a disguised appeal

Exclusive title by contiguity.

Argument from numbers.

to the principle of the *vis major*, and strikes at the root of the fundamental axiom of international law, that all nations are upon a footing of perfect equality as to their obligations and rights. "Power or weakness," observes Vattel, "does not in this respect produce any difference. A dwarf is as much a man as a giant: a small republic is no less a sovereign state than the most powerful kingdom;" so that every argument which rests on the grounds that the millions already within reach of the Pacific Ocean, entitle the United States by their numbers to the occupation and sovereignty of the country, to the exclusion of Great Britain, is out of place where questions of greater right, and not of greater interest, are under discussion. It should however not be forgotten, in discussing the probability of the Oregon Territory being occupied from any other quarter than the United States, that British subjects are restricted by the charter of the Hudson's Bay Company from settling there, it being declared in that charter, "that no British subjects, other than and except the said Governor and Company, and their successors, and the persons authorised to carry on exclusive trade by them, shall trade with the Indians" within such parts of North America as are "to the northward and to the westward of the lands and territories belonging to the United States of America."

Derivative title from Spain.

In respect to the derivative title from Spain, Mr. Gallatin, in admitting the Convention of the Escurial to be now in force, as being of a commercial nature, and therefore renewed, in common with all the treaties of commerce existing previously to the year 1796, between Spain and Great Britain,

by the treaty signed at Madrid on August 28. 1814, (Martens' Traités, Nouveau Recueil, iv. p. 122.) contended in the first place that the word "settlement" was used in the third and fifth articles of the convention, in the narrower sense which Mr. Rush had endeavoured to attach to it in the negotiations of 1824, namely, as "connected with the commerce to be carried on with the natives;"

Settlement.

and, secondly, that if the word "settlement" was employed in its most unlimited sense, still that the provisions of the convention had no connection with an ultimate partition of the country for the purposes of permanent colonisation. The truth of the last observation, to a certain extent, is self-evident, from the fact of the ultimate partition of the country being still the subject of discussion; but in respect to the word "settlement," some objections to the attempt to narrow its meaning have been already stated, and may be referred to above (p. 291–297.) A few further observations, however, may not be superfluous. Mr. Gallatin, in another part of his counter-statement says, "It is also believed, that mere factories, established solely for the purpose of trafficking with the natives, *and without any view to cultivation and permanent settlement*, cannot, of themselves, and unsupported by any other consideration, give any better title to dominion and absolute sovereignty, than similar establishments made in a civilised country."

If we admit, for the sake of the argument, that temporary trading stations, erected without any view to cultivation and permanent settlement, cannot of themselves establish a title to exclusive dominion and sovereignty, this very fact alone

would be conclusive to show, from the provisions of the fifth article, that such trading stations were not intended by the word "settlement" in the Treaty of the Escurial. The settlements there contemplated were only to be made in places not already occupied, and further, "in all places wherever the subjects of either *shall have made settlements* since the month of April 1789, *or shall hereafter make any*, the subjects of the other shall have free access, and shall carry on *their trade* without any disturbance or molestation." Unless the settlements here alluded to would have been considered to give a title of exclusive sovereignty by the recognised law of nations to the party which had formed them, if not otherwise specified, this provision would have been not merely uncalled for, but on the well-known principle of "expressio unius est exclusio alterius," would have tended to narrow rather than to enlarge the rights of the other party. The reason, however, of this "special provision" will be obvious, when it is called to mind that both Spain and Great Britain carefully excluded foreign Powers from all trade with their colonies, and that Spain had asserted in the preliminary negotiations a right of "sovereignty, navigation, and exclusive commerce to the continent and islands of the South Sea," and had also maintained, that "although she might not have *establishments or colonies* planted upon the coasts or in the ports in dispute, it did not follow that such coast or port did not belong to her." Unless therefore some such provision had been introduced into the treaty, the subsequent settlements on the north-west coast would have

been closed against all foreign traders, in conformity to the general laws of both countries.

Factories. But if Mr. Gallatin is justified in advancing, as a principle of international law, that "mere factories, established solely for the purpose of trafficking with the natives, and without any view to cultivation and permanent settlement," such as he alleges the trading posts of the North-west Company to be, cannot of themselves give a good title to dominion and absolute sovereignty, he cuts away from under the United States the ground upon which they had set up their original title to exclusive sovereignty. For the factory of the Pacific Fur Company at Astoria, on the south bank of the Columbia, would be, according to this view, quite as inoperative for the purpose of constituting a title by settlement in favour of the United States as that of the Hudson's Bay Company at Fort Vancouver, on the northern bank, would be ineffectual for a similar purpose in favour of Great Britain; and, *à fortiori*, the passing visit of a merchant ship, such as the Columbia, despatched solely *for the purpose of trafficking with the natives*, and not with the object of making discoveries, or with any authority to take possession of territory for purposes of permanent settlement, could never be held entitled to the consideration which the United States claim to have attached to it.

Intermixed settlements. Mr. Gallatin observed that "the stipulations of the Nootka convention permitted promiscuous and intermixed settlements everywhere, and over the whole face of the country, to the subjects of both parties, and even declared every such settlement;

made by either party, *in a degree common to the other*. Such a state of things is clearly incompatible with distinct jurisdiction and sovereignty. The convention therefore could have had no such object in view as to fix the relations of the contracting parties in that respect." If, however, it can be shown that such a state of things *is not incompatible with distinct jurisdiction*, the argument will fall to the ground.

It appears then to have been decided in the United States Courts, that "although the territorial line of a nation, *for the purposes of absolute jurisdiction*, may not extend beyond the middle of the stream, yet the right to the use of the whole river or bay *for the purposes of trade*, navigation, and passage, may be common to both nations." (The Fame, 3 Mason 147. C. C. Maine, 1822, cited in Elliott's American Diplomatic Code, vol. ii. p. 345.)

Here then we have the principle recognised of *use for the purposes of trade being in a degree common* to both nations, yet such a state of things being *not incompatible with distinct jurisdiction* and sovereignty. Distinct jurisdiction.

Still less would the fact of the convention permitting promiscuous and intermixed settlements to be made everywhere by the subjects of both parties be incompatible with distinct jurisdiction; for, as Vattel observes (l. ii. § 98.), "it may happen that a nation is contented with possessing only certain places, or appropriating to itself certain rights in a country that has not an owner, without being solicitous to take possession of the whole country. In this case, another nation may take

possession of what the first has neglected; but this cannot be done without allowing all the rights acquired by the first to subsist in their full and absolute independence. In such cases, it is proper that regulations should be made by treaty, and this precaution is seldom neglected among civilised nations."

Mr. Gallatin further continues: "On that subject (jurisdiction and sovereignty) it (the convention) established or changed nothing, but left the parties where it found them, and in possession of all such rights, whether derived from discovery, or from any other consideration, as belonged to each, to be urged by each, whenever the question of permanent and separate possession and sovereignty came to be discussed between them."

It may be perfectly correct to say that the convention "left the parties where it found them, and in possession of all such rights, whether derived from discovery or from any other consideration, as belonged to each;" for the very object of the third article was not the concession of favours, but the recognition of mutual rights. On the other hand, that it left all question of rights open, to be urged by each at any future time, as if there had been no declaration or acknowledgment on the subject, seems not merely to be at variance with the substance of the third article, but to be utterly irreconcilable with the preamble of the convention, which contemplates an amicable arrangement of the differences between the two Crowns, "which, setting aside all retrospective discussion of the rights and pretensions of the two parties, should fix their res-

Recognition of mutual rights.

pective situation for the future on a basis conformable to their true interests, as well as to the mutual desire with which their said Majesties are animated, of establishing with each other, in every thing and in all places, the most perfect friendship, harmony, and good correspondence."

If, indeed, Mr. Gallatin means that whenever the parties should find it desirable to terminate the condition of *occupation in common*, it would be competent for either party to appeal to the general law of nations, subject to the provisions of the treaty, the reason of the thing at once suggests that recourse must be had to some general principles of law, in a case for which the treaty does not provide. But the general law of nations must only be invoked as supplementary to the special law recognised by the convention. By the special law of the treaty, the mutual right of making settlements in places not already occupied was acknowledged; but the rights accruing to either party by virtue of such settlements, when made, would be determined by the general law of nations. The *reciprocal liberty* of free access and unmolested trade with such settlements was provided for by the fifth article; the treaty, however, was silent as to the relations of the parties in other respects, after they should have made settlements. These relations then would be determined by the general law.

General law of nations.

The common right of either party to make settlements in *places not occupied* was recognised by the convention. Occupation was thus declared to be the test of exclusive title, and "territory not occupied," was impliedly "territory without an

Priority of settlement.

owner." Priority of settlement would thus give as perfect a title under the special law of the convention, as discovery and settlement under the general law of nations. If this view be correct,

Vattel.

then Vattel supplies the rule of law which would determine the mutual relations attendant on such settlements. "If at the same time two or more nations discover and *take possession of* an island, or *any other desert land without an owner*, they ought to agree between themselves, and make an equitable partition; but, if they cannot agree, each will have the right of empire and the domain in the parts in which *they first settled.*" (l. ii. § 95.)

The mutual right of the two parties to settle in places not yet occupied, having thus been acknowledged by the convention, the sovereignty was from the nature of things left in abeyance *pending the establishing of such settlements*, but there was no provision in the treaty to suspend the operation of the general law of nations, in respect to the territorial rights consequent on such settlements. To negative the operation of the general law, it would be necessary to show that the *dominium utile*, as distinct from the sovereignty, was all that accrued by such

Territory in use.

settlements. But in cases in which the territory in use, (*dominium utile*) as distinct from the territory in chief (*dominium eminens*), has been granted by treaty, such a concession has never been said to be granted "for the purpose of making settlements," and it may be observed that in such cases, express reference is made to the party who retains the territory in chief.

Thus in the 17th article of the Treaty of Paris, by which Spain granted to Great Britain a *usufructuary right* in the territory of the Bay of Honduras, it was provided: Treaty of Paris.

"That his Britannic Majesty shall cause to be demolished the fortifications which his subjects shall have erected in the Bay of Honduras, and in *other places of the territory of Spain* in that part of the world, four months after the ratification of the present treaty.

"And his Catholic Majesty shall not permit his Britannic Majesty's subjects or their workmen to be disturbed or molested under any pretence whatever in *the said places*, in their occupation of cutting, loading, and carrying away logwood; and for this purpose they may build without hindrance, and *occupy without interruption*, the houses which are necessary for themselves or families.

"And his Catholic Majesty assures to them by these articles the full enjoyment of those advantages and powers on the *Spanish coasts and territories*, as above stipulated."

In this case it will be seen that his Catholic Majesty granted to Great Britain the usufructuary right, or, according to the language of the Civil Law, Jus utendi, fruendi, salvâ rerum substantiâ, of the peculiar produce of the soil of the Bay of Honduras, reserving to herself the property of the soil, or the territory in chief. Usufructuary right.

But on looking once more at the words of the 3d article, it was agreed between the two contracting parties, that "their respective subjects shall not be disturbed or molested either in navigating or car- Settlement not to be disturbed.

rying on their fisheries in the Pacific Ocean or in the South Seas, or in landing on the coasts of those seas, in places not already occupied, for the purpose of carrying on their commerce with the natives of the country, or of making settlements there." Now the only pretext for such disturbance or molestation would be the claim of territorial right or sovereignty: and that pretext being formally relinquished by the stipulation not to disturb, the claim of territorial right, as founded on considerations anterior to the treaty, was mutually abandoned by either party. Again, the *subjects* of either party were declared entitled to make *settlements* in places not already occupied. If now there was a reservation of territorial right in chief by one party, then the families settling there, which is in effect colonising (for the cultivation of the soil must be allowed them), could not be the subjects of the other party, if they settled and became domiciled there; yet they are acknowledged to retain their character. Now, such as the subject is, such is the jurisdiction. If, for instance, the absolute and sole territory of the north-west coast of America, exclusive of any other Power, was possessed and retained by Spain, then the jurisdiction over all persons settling there belonged to Spain: the residents in that territory were the subjects of Spain *pro hâc vice*, wheresoever they were born, agreeably to the principle admitted all over Europe, that every man is the subject of the jurisdiction and territory in which he is domiciled. But British subjects settling in the places not already occupied on the north-west coast of America could not thereby be divested of the cha-

Territory in chief not reserved.

racter of their original domicile, for it was only in such character that they were entitled not to be disturbed or molested in their settlements,—it was only under the authority and protection of a British sovereign that they were entitled to set foot upon the territory. Other considerations will readily suggest themselves, but it is unnecessary to pursue the subject further.

Convention of 1827.

These negotiations were brought to a close by the signature of the Convention of 1823, by which the provisions of the 3d article of the Convention of 1818 were further indefinitely extended, it being competent however for either party to abrogate the agreement, on giving twelve months' notice to the other party.

CHAPTER XVII.

NEGOTIATIONS BETWEEN THE UNITED STATES AND GREAT BRITAIN IN 1844–5.

General Line of Argument on either Side. — Original Title of the United States. — Nationality of a Merchant Ship. — Mr. Buchanan's Statement. — Mr. Rush's View. — The Practice of Nations makes a Distinction between public and private Vessels. — Tribunals of the United States.—Laws of South Carolina.—The Distinction rests on the Comity of Nations. — It is not arbitrary, at the Will of each Nation, nor can it be disturbed. — Dr. Channing on the Character of Merchant Ships. — The taking Possession of a vacant Country for the Purpose of Settlement, is an Act of Sovereignty.—Mr. Gallatin's Letter to Mr. Astor on the Flag. — Discoveries, as the Groundwork of territorial Title, technical. — Lord Stowell. — Inchoate Acts of Sovereignty. — Vattel. — Title by Discovery, the Creature of the Comity of Nations. — Gray's first entering the Mouth of the Columbia does not satisfy the required Conditions. — Heceta's Discovery, in the popular sense of the Term. — Gray's the first Exploration of the Mouth. — Expedition of Lewis and Clarke. — Mr. Rush's Mis-statement in 1824, as to the Sources of the Multnomah, and of Clarke's River. — Inaccuracy in the Statements of Mr. Calhoun, and of Mr. Buchanan. — The Great Northern Branch of the Columbia, not called Clarke's River by Lewis and Clarke. — Clarke's River supposed by them to be a Tributary of the Tacoutche-Tesse. — The Tacoutche-Tesse reputed to be the northernmost Branch of the Columbia River till 1812.—Humboldt's New Spain. — Junction of the Lewis with the Columbia River. — The northernmost Branch of the Columbia first explored by Thomson. — Lewis and Clarke did not encamp and winter on the north Bank of the Columbia. — Fort Clatsop on the south Bank. — Mr. Pakenham's Counter-statement. — Settlements of the United States. — Mr. Calhoun's Statement. — Mr. Henry's trading Fort. — Failure of Captain Smith's Undertaking. — Mr. Astor's Adventure. — Astoria on the south Bank of the Columbia. — Rival Station of the North-west Company on the Spokan River. — Astoria not a national

Settlement. — No Claim advanced to it by the United States in the Negotiations preceding the Florida Treaty. — Astoria transferred to the North-west Company by Sale. — The United States formally placed in possession of it in 1818. — Mr. Calhoun's Argument. — Confusion of the Settlement with the Territory. — The Right of Possession. — The Question at issue in 1818. — Mr. Rush did not then assert a perfect Right. — Mr. Buchanan now maintains an exclusive Title. — The derivative Title of Spain. — Inconsistency of the United States Commissioners. — Effect of the Nootka Convention. — Contrast of the Claims of the Two Governments. — Mr. Calhoun's Admission as to Heceta's Discovery. — True Character of the original Title of the United States. — Not an exclusive Title. — Exclusiveness does not admit of Degree. — The Title of Spain imperfect by express Convention. — No Rights granted by the Nootka Convention. — Mr. Buchanan's Statement. — Examination of the Argument. — Opinions expressed in Parliament in 1790. — Mr. Pitt's Declaration.

THE unexpected publication of the correspondence between Mr. Pakenham, the British Minister, and Messrs. Calhoun and Buchanan, the Secretaries of State at Washington, requires that the more important arguments in their respective statements should be briefly examined, lest the present inquiry should be thought incomplete. No substantially new topic seems to have been advanced during the negotiation, but the treatment of several points in the argument on either side was materially modified. The Commissioners of the United States appear on this occasion to have relied more immediately on the original title of the United States than on the derivative Spanish title which Mr. Rush first set up in 1824, or the derivative French title which Mr. Gallatin brought forward in 1826. The British Minister, on the other hand, rested his position more decidedly on the recognition of the title of Great Britain by the Convention of the Escurial, and less on the general proof of it by discovery and settlement.

General line of argument.

Original title of the United States.

In reference, then, to the original title of the United States, Mr. Calhoun, in his letter of September 3. 1844, grounded it on the prior discovery of the mouth of the Columbia River by Captain Gray, on the prior exploration of the river from its head-waters by Lewis and Clarke in 1805–6, on the prior settlement on its banks by American citizens in 1809–10, and by the Pacific Fur Company at Astoria in 1811, which latter establishment was formally restored by the British Government in 1818 to the Government of the United States. Mr. Buchanan, in his letter of July 12. 1845, having briefly recapitulated these alleged facts, says:—"If the discovery of the mouth of a river, followed up within a reasonable time by the first exploration of its main channel and its branches, and appropriated by the first settlements on its banks, do not constitute a title to the territory drained by its waters in the nation performing these acts, then the principles consecrated by the practice of civilised nations ever since the discovery of the New World must have lost their force. Those principles were necessary to procure the peace of the world. Had they not been enforced in practice, clashing claims to newly-discovered territory, and perpetual strife among the nations, would have been the inevitable result."

It may be as well to examine into the real character of these alleged facts, before considering how far they warrant the application of the principle of international law, to which Mr. Buchanan seeks to adapt them.

In regard to the discovery of the mouth of the

Columbia River by Captain Gray, in the merchant ship Columbia, under the flag of the United States, Mr. Calhoun eluded the objection that the Columbia was not a *public* but a *private* ship, by simply observing—"Indeed, so conclusive is the evidence in his (Gray's) favour, that it has been attempted to evade our claim on the novel and wholly untenable ground that his discovery was made, not in a national but private vessel;" and so passed on to other questions. Mr. Buchanan, on the other hand, devotes a few lines to the subject:—"The British plenipotentiary attempts to depreciate the value to the United States of Gray's discovery, because his ship was a *trading* and not a *national* vessel. As he furnishes no reason for this distinction, the undersigned will confine himself to the remark, that a merchant vessel bears the flag of her country at her mast-head, and continues under its jurisdiction and protection, in the same manner as though she *had been commissioned for the express purpose of making discoveries;* besides, beyond all doubt, this discovery was made by Gray; and to what nation could the benefit of it belong unless it be to the United States? Certainly not to Great Britain, and if to Spain, the United States are now her representative.

Nationality of a merchant vessel.

Mr. Buchanan.

Mr. Rush had in a similar manner maintained, "That the ship of Captain Gray, whether fitted out by the Government of the United States or not, was a national ship. If she was not so in a technical sense of the word, she was in the full sense of it, *applicable to such an occasion.* She bore at her stern the flag of the nation, sailed forth under the

Mr. Rush.

protection of the nation, and was to be identified with the rights of the nation."

In both these statements it seems to be admitted, that there is a technical distinction in the nationality of a public ship and of a private ship; but it is maintained that *for the purposes of discovery* a merchant ship, under the command of a private individual, is, in the full sense of the word, a national ship. This doctrine, however, finds no countenance in the practice of nations, which, on the contrary, makes a broad distinction between public and private vessels, in reference to all territorial questions. Thus the comity of nations attaches to the nationality of public vessels coming into the ports of a foreign sovereign different considerations from those with which it regards the nationality of private vessels. To go no further than the tribunals of the United States, "a public vessel of war, of a foreign sovereign, coming into our ports, and demeaning herself in a friendly manner, is exempt from the jurisdiction of this country," (The schooner Exchange *v.* M'Faddon, 7 Cranch, 116. Supreme Court of the United States, 1812); but a private merchant ship has not that courtesy extended to it, if it ventures *intra fauces terræ*. For instance, if a British merchant vessel should enter the port of Charleston, with free negro sailors on board, the nationality of the flag will not be sufficient to protect them from the operation of the municipal law, which forbids liberty to the negro within the limits of South Carolina; and thus it repeatedly happens, that negroes or persons of colour arriving in the ports of South Carolina,

The practice of nations.

Tribunals of the United States.

though free subjects of her Britannic Majesty, and engaged *on board of a British merchant vessel* in the service of the ship, have been by virtue of the *lex loci* immediately taken from under *the protection of the British flag*, and thrown into prison. In an analogous manner, if a merchant ship from Carolina should enter the port of London, with one or more negro slaves on board, the mercantile flag of the United States would not preclude them from the freedom which the soil of Great Britain imparts to all who come within its precincts. Laws of South Carolina.

A public vessel, however, is not entitled, *as a matter of right*, to any exemption from the jurisdiction of the sovereign whose territory she enters. For the jurisdiction of every nation within its own territory is exclusive and absolute, and all limitations to the full and complete exercise of that jurisdiction must be traced up to the consent of the nation itself. But the comity of nations regards a public vessel as representing the sovereignty of the nation whose flag it bears. If it therefore leaves the high seas, the common territory of all nations, and enters into a friendly port, it is admitted to the privileges which would be extended to the sovereign himself. One sovereign, however, can only be supposed to enter a foreign territory, as his sovereign rights entitle him to no extra-territorial privileges, under an express licence, or in the confidence that the immunities belonging to his independent sovereign station, though not expressly stipulated, are reserved by implication, and will be extended to him. In a similar manner it is under an implied licence that a public ship enters Comity of nations.

the port of a friendly power, and retains its independent sovereign character, by the courtesy of the nation within the precincts of whose territorial jurisdiction it has placed itself. A private ship, on the contrary, entering the ports of a foreign power, has freedom of access allowed to it upon a tacit condition of a different kind, namely, that it becomes subject to the municipal laws of the country. Hence every nation assigns to its mercantile marine a distinct flag from that which its public ships are authorised to exhibit as the *credential* of their representing the sovereign power of the state.

Not arbitrary.

This distinction between the signification of the respective flags is not arbitrary, at the will of each nation, but is recognised by the law of nations: whilst the mercantile flag imparts to the vessel which bears it a right to participate in the privileges secured by commercial treaties with foreign powers, the public flag of a nation communicates the full character of sovereignty, and is respected accordingly. The commercial flag thus carries with it *nationality*, the public flag, *the national sovereignty*.

Not to be disturbed.

It is as much out of the power of any particular state to disturb this distinction, and to attach to its mercantile flag, beyond the jurisdiction of its own territory, different considerations from those which the practice of nations has sanctioned, as to increase or diminish the list of offences against the law of nations. No individual nation can say, "That is our mercantile flag: such and such powers shall attach to it, because it is our pleasure that it should be so:" on the contrary, it is the practice of nations which defines those powers, and to that

practice we must have recourse, if we would ascertain them.

In illustration of the above views, the following extract from Dr. Channing's eloquent and able pamphlet on "the Duty of the Free States," will not seem out of place. It was suggested by the well-known case of the Creole: — "It seems to be supposed by some that there is a peculiar sacredness in a vessel, which exempts it from all control in the ports of other nations. A vessel is sometimes said to be 'an extension' of the territory to which it belongs. The nation, we are told, is present in the vessel; and its honour and rights are involved in the treatment which its flag receives abroad. These ideas are, in the main, true in regard to ships on the high seas. The sea is the exclusive property of no nation. It is subject to none. It is the common and equal property of all. No state has jurisdiction over it. No state can write its laws upon that restless surface. A ship at sea carries with her, and represents, the rights of her country, rights equal to those which any other enjoys. The slightest application of the laws of another nation to her is to be resisted. She is subjected to no law but that of her own country, and to the law of nations, which presses equally on all states. She may thus be called, with no violence to language, an extension of the territory to which she belongs. But suppose her to quit the open sea, and enter a port, what a change is produced in her condition! At sea she sustained the same relations to all nations, those of an equal. Now she sustains a new and peculiar relation to the nation which she has entered. She

Channing's Duty of Free States.

passes at once under its jurisdiction. She is subject to its laws. She is entered by its officers. If a criminal flies to her for shelter, he may be pursued and apprehended. If her own men violate the laws of the land, they may be seized and punished. *The nation is not present in her.* She has left the open highway of the ocean, where all nations are equals, and entered a port where one nation alone is clothed with authority. What matters it that a vessel in the harbour of Nassau is owned in America? This does not change her locality. She has contracted new duties and obligations by being placed under a new jurisdiction. Her relations differ essentially from those which she sustained at home or on the open sea. These remarks apply, of course, *to merchant vessels* alone. *A ship of war is* '*an extension of the territory*' to which she belongs, not only when she is on the ocean, but in a foreign port. In this respect she resembles an army marching by consent through a neutral country. Neither ship of war nor army falls under the jurisdiction of foreign states. *Merchant vessels resemble individuals.* Both become subject to the laws of the land which they enter."

The taking possession of a vacant country for the purpose of settlement is one of the highest acts of sovereign power, for a nation thereby acquires not merely "the *domain*, by virtue of which it has the exclusive use of the country for the supply of its necessities, and may dispose of it as it thinks proper, but also the *empire*, or the right of sovereign command, by which it directs and regulates at its pleasure every thing that passes in the country."

(Vattel, i. § 204.) It is hardly necessary to add, that a commission from the sovereign alone will authorise the act of taking possession, so as to secure respect for it, *as a public act*, from other nations. Thus we find that in the leter from Mr. Gallatin to Mr. Astor, elsewhere quoted, this principle was fully appreciated by Mr. Astor, when he applied, in 1816, for a commission from the government of the United States. "You mentioned to me that you were disposed once more to renew the attempt, and to re-establish Astoria, provided you had the *protection of the American flag:* for which purpose a *lieutenant's command* would be sufficient to you. You requested me to mention this to the President, which I did. Mr. Madison said, he would consider the subject, and although he did not commit himself, I thought that he received the proposal favourably." Mr. Gallatin's letter.

It remains to be considered whether the practice of nations has attached different considerations to the flag in respect to *discoveries*. *Discoveries*, however, as forming the groundwork of territorial title, are in themselves *technical*. They are *inchoate acts of sovereignty*. "Even in newly-discovered countries," said Lord Stowell, in the case of the Fama, already cited, "where *a title is meant to be established*, for the first time, some act of possession is usually done and proclaimed as a notification of the fact." It is not, therefore, the mere sight of land which constitutes a discovery, in the sense in which the practice of nations respects it, as the basis of territorial title; there must be some formal act of taking possession, which, as being an act of sovereign Inchoate acts of sovereignty. Lord Stowell.

power, can only be performed through a commission from the sovereign. Thus Vattel, in the passage so frequently quoted, says, "The practice of nations has usually respected such a discovery, when made by navigators, who have been furnished with a *commission from their sovereign*, and meeting with islands or other lands in a desert state, have taken possession of them in the name of the nation."

Vattel.

Title by discovery.

The conditional title by discovery is entirely the creature of the comity of nations; it has no foundation in the law of nature, according to which, if the discoverer has not occupied the territory, it would be presumed to remain vacant, and open to the next comer. For such purposes, however, the citizen or subject is not regarded as the instrument of his sovereign, unless he bears his commission, when his acts are respected as public acts, and are operative as between nation and nation.

Gray's first entering of the Columbia.

It would thus appear that the first entering of the mouth of the Columbia River by Gray, being the act of a private citizen, sailing in a private ship for the purposes of trade, under the mercantile flag of his country, was not in the received sense of the word *a discovery*, which, according to the practice of nations, could lay the foundation of a title to territorial sovereignty. It does not satisfy the required conditions upon which alone the comity of nations would respect it. When therefore Mr. Buchanan says, "Besides, beyond all doubt this discovery was made by Gray, and to what nation could the benefit belong, unless it be to the United States," he assumes that the comity of nations will attach benefit to such a discovery, contrary to the practice of nations. It is thus unnecessary

to decide to what nation the benefit will belong, in a case in which no benefit can be held to have resulted. On the other hand, it is admitted by both of the American Secretaries of State, that the *discovery* of the mouth of the Columbia, in the popular sense of the word, was made by the Spanish navigator Heceta, some years before Gray visited the coast. It consequently follows that Gray achieved the first exploration, and not the discovery of the mouth of the river, even in the popular sense of the term.

Heceta's discovery.

Gray's, the first exploration.

In respect to the prior exploration of the Columbia River from its head-waters, by Lewis and Clarke, in 1805–6, Mr. Calhoun, having conducted the expedition, which had been despatched under the auspices of the Government of the United States in the spring of 1804, as far as the head-waters of the Missouri, states that "in the summer of 1805, they reached the head-waters of the Columbia River. After crossing many of the streams falling into it, they reached the Kooskooskee, in latitude, 43° 34′, descended that to the principal *northern* branch, which they called Lewis's; followed that to its junction with the great *northern branch*, which they called Clarke; and thence descended to the mouth of the river, where they landed, and *encamped on the north side, on Cape Disappointment, and wintered.*" Mr. Buchanan, in referring to this part of Mr. Calhoun's argument, which he did not consider it necessary to repeat, observed that he had shown, "that Messrs. Lewis and Clarke, under a commission from their Government, first explored the waters of this river almost *from its head-springs*

Lewis and Clarke.

to the Pacific, passing the winter of 1805 and 1806 *on its northern shore*, near the ocean." These statements however do not correspond with the facts themselves which they profess to represent.

Mr. Rush's mis-statement.

Mr. Rush, in the negotiations of 1824, had set up for the United States an exclusive claim to the whole territory between 42° and 51° north, on the ground that "it had been ascertained that the Columbia River extended by the River Multnomah to as low as 42°, and by Clarke's River to a point is high up as 51°, if not beyond that point." The obscurity in which the geographical relations of the Oregon territory were at that time involved, might, to a certain extent, excuse the mis-statement of Mr. Rush on this occasion, for, as already observed, it has been subsequently ascertained that the source of the Multnomah is in about 43° 45′, and that of Clarke's River, in 45°30′; but Mr. Calhoun's statement involves an historical as well as a geographical inaccuracy, which, under the circumstances, seems to have been intentionally put forward, since it is repeated by Mr. Buchanan. It is presumed that in the copy of the correspondence which has been circulated in the public journals, and which has been published in a separate form by Messrs. Wiley and Putnam of Waterloo-place, there is a misprint in Mr. Calhoun's describing Lewis' River as the principal *northern* branch, more particularly as Clarke's River is immediately after spoken of as the great *northern* branch. Lewis' River must evidently have been intended to be described as the principal *southern* branch, being the river on which the Shoshonee or Snake Indians

Mr. Calhoun's inaccuracies.

fish, and which the travellers reached on descending the Kooskooskee. This inaccuracy may be passed over as an error of the press, but in respect to the next assertion of Mr. Calhoun, that Lewis and Clarke followed this river to its junction with the *great northern branch, which they called Clarke's River*, it is not borne out by the account which Lewis and Clarke themselves give. On Friday, Sept. 6., Captain Clarke and his party reached the first river on the western side of the Rocky Mountains, to which they gave *the name of Clarke's River* (Travels, ch. xvii.), running from south to north, and which, from the account of the natives, they had reason to suppose, after going as far northward as the head-waters of the Medicine River (a tributary of the Missouri), turned to the westward and joined the Tacoutche-Tesse River. It must not be forgotten that the Tacoutche-Tesse, discovered by Alexander Mackenzie in 1793, was supposed to be the northernmost branch of the Columbia down to so late a period as 1812. Thus Alexander von Humboldt, in his New Spain (l. i. c. 2.), writes: — "Sous les 54° 37′ de latitude boreale, dans le parallèle de l'île de la Reine Charlotte, les sources *de la rivière de la Paix* (Peace River) ou d'Ounigigah, se rapprochent de sept lieues des sources du Tacoutché-Tessé, que l'on suppose être identique avec la rivière de Colombia. La première de ces rivières va à la mer du Nord, après avoir mêlé ses eaux à celles du lac de l'Esclave et à celles du fleuve Mackenzie. La seconde rivière, celle de Colombia, se jette dans l'Océan Pacifique près du Cap Disappointment, au

Tacoutche Tesse.

Northernmost branch of the Columbia.

Humboldt's New Spain.

sud de Nootka-Sound, d'après le célèbre voyageur Vancouver, sous les 46° 19′ de latitude."

Mr. Greenhow (p. 285.) says, "Three days afterwards they entered the principal southern branch of the Columbia, to which they gave the name of Lewis: and in seven days more they reached the point of the confluence with *the larger northern branch, called by them the Clarke.*" Such, however, is not the account of the travellers, who state that, having followed the course of the Lewis River, they reached on the 16th of October its junction with the *Columbia River* (chap. xviii.), the course of which was "from the north-west," as Captain Clarke ascertained by ascending it some little distance. They nowhere, throughout the account of their travels, call this main river by any other name than the Columbia: they nowhere speak of it by the name of Clarke's River; it is a reflection on their memory to represent them as supposing that this great northern branch was the river to which they gave the name of Clarke, for they fully believed, when they reached the main stream, that they had reached the Tacoutche-Tesse of Mackenzie, and at the same time the Columbia of Gray and Vancouver, of which they considered Clarke's River to be merely a tributary. The names of Lewis and Clarke are totally unconnected with the great northern branch of the Columbia River, which was discovered and first explored from its sources in about 52° N. L., by Mr. Thomson, the surveyor or astronomer of the North-west Company, in 1811. This is an important fact, inasmuch as the exclusive claim of the United States was advanced

Junction of the Lewis with the Columbia river.

Thomson.

in 1824, to the territory as far north as 51°, expressly on the ground that Clarke's River extended as far north as that parallel, or even beyond that point, which is not the case. This northern branch, down which Mr. Thomson first penetrated, is entitled to be considered as the main branch of the Columbia, on the well-known principle that the sources most distant from the sea are regarded as the true sources of a river, according to which doctrine the name of Columbia has been in practice retained for this northern branch, whilst distinctive names have been given to all the southern tributaries.

Mr. Calhoun continues to say, "and thence they (Lewis and Clarke) descended to the mouth of the river, where they landed, and encamped *on the north side, on Cape Disappointment, and wintered.*" The meaning of this passage might be doubtful, unless Mr. Buchanan had cleared it up by his expression of "passing the winter of 1805 and 1806 on *its northern shore*, near the ocean." When it is remembered that it is the possession of the *north bank* of the river which is contested by the two parties to the negotiation; and that the incidents of this expedition are formally alleged, on the side of the United States, as forming part of the ground-work of their exclusive title, and that the British negotiators have objected throughout to the alleged completeness of the title of the United States, on the express ground that it is at best an aggregate of imperfect titles, and that the distinction between a perfect and imperfect title is not one of *degree*, but of *kind*, it may not be unimportant to remark,

Lewis and Clarke's encampment.

that Lewis and Clarke passed the winter of 1805-6 on the *southern shore* of the Columbia, in an encampment on a point of high land on the banks of the river Netul. It is perfectly true that, having proceeded down the Columbia as far the roughness of the waves would allow them, they landed on the north side on the 16th of November, and encamped on the shore near a village of the Chinnook Indians, just above high-water mark, where Captain Clarke remained for nine days, until Captain Lewis had succeeded in selecting a favourable spot for their winter's encampment; but the locality where they *encamped* and *wintered*, *was on the south side of the Columbia*, amongst the Clatsop Indians, and from this very circumstance they gave to it the name of *Fort Clatsop*, which is so marked down in the map prefixed to the travels of Lewis and Clarke, with the further designation of "The wintering post of Captains Lewis and Clarke in 1805 and 1806." Had not Mr. Calhoun specified the locality of this winter's encampment as an element of the *cumulative title of* the United States, and had not Mr. Buchanan repeated the statement of his predecessor more explicitly, it would not have been thought necessary to discuss the circumstances so fully; but as one object of this inquiry is to clear up the facts of the case, which, from the nature of the subject, are obscure, if this error of statement had not been pointed out, it might have tended to increase the existing intricacy of the question, more particularly when it has an official character impressed upon it. It can hardly be supposed to be an error of the press, since Cape

Fort Clatsop.

Disappointment, which is on the north bank, is referred to by Mr. Calhoun as adjoining the spot where they "encamped and wintered."

Mr. Pakenham's counter-statement.

The result of this inquiry cannot be better summed up than in the words of Mr. Pakenham's counter-statement:—"With respect to the expedition of Lewis and Clarke, it must, on a close examination of the route pursued by them, be confessed, that neither on their outward journey to the Pacific, nor on their homeward journey to the United States, did they touch upon the head-waters of the principal branch of the Columbia River, which lie far to the north of the parts of the country traversed and explored by them.

"Thomson, of the British North-west Company, was the first civilised person who navigated the northern, in reality the main branch of the Columbia River, or traversed any part of the country drained by it.

"It was by a tributary of the Columbia that Lewis and Clarke made their way to the main stream of that river, which they reached at a point distant, it is believed, not more than 200 miles from the point to which the river had been previously explored by Broughton.

"These facts, the undersigned conceives, will be found sufficient to reduce the value of Lewis and Clarke's exploration on the Columbia to limits, which would by no means justify a claim to the whole valley drained by that river and its branches."

Settlements of the United States.

Mr. Calhoun next proceeds to state the grounds on which, as alleged, priority of settlement was no less certain on the side of the United States:

Mr. Calhoun's statement.

"Establishments were formed by American citizens on the Columbia as early as 1809 and 1810. In the latter year a company was formed at New York, at the head of which was John Jacob Astor, a wealthy merchant of that city, the object of which was to form a regular chain of establishments on the Columbia River, and the contiguous coasts of the Pacific, *for commercial purposes*. Early in the spring of 1811, they made their first establishment on the south side of the river, a few miles above Point George, where they were visited in July following by Mr. Thomson, a surveyor and astronomer of the North-west Company, and his party. They had been sent out by that company to forestall the American company in occupying the mouth of the river, but found themselves defeated in their object. The American company formed two other connected establishments higher up the river: one at the confluence of the Okanegan with the north branch of the Columbia, about 600 miles above its mouth, and the other on the Spokan, a stream falling into the north branch, some fifty miles above."

Mr. Henry's trading post.

Mr. Calhoun, in making the above general allusion to establishments formed in 1809 and 1810, may be supposed to refer to a trading post founded by Mr. Henry, one of the agents of the Missouri Fur Company, on a branch of the Lewis River, the great southern arm of the Columbia. This post, however, was shortly abandoned in consequence of the hostility of the natives, and the difficulty of obtaining supplies. (Greenhow, p. 292.) It would, however, be rather an overstrained statement to

describe this hunting station as an establishment formed on the Columbia, considering its very great distance from the junction of the Lewis River with the Columbia. Mr. Calhoun, however, may be alluding at the same time to the undertaking of Captain Smith, in the Albatross, in 1810, who is said by Mr. Greenhow to have attempted to found a trading post at Oak Point, on the south side of the Columbia, about forty miles from its mouth, and to have almost immediately abandoned the scheme. Such an attempt, however, can hardly be entitled to the character of a settlement. Beyond these two instances, it is believed that there is no occasion on record of the presence of citizens of the United States on the west of side the Rocky Mountains, during the years 1809-10, which could give rise to the supposition of an establishment having been formed by them.

Captain Smith's undertaking.

In respect, however, to Mr. Astor's adventure, the Pacific Fur Company was a mere mercantile firm, the formation of which originated with Mr. Astor, a German by birth, and ultimately a naturalised citizen of the United States. The original company was formed in 1810, and, according to Mr. Washington Irving, consisted of Mr. Astor himself, three Scotchmen, who were British subjects, and one native citizen of the United States. Three more Scotchmen and two more citizens of the United States were subsequently admitted, so that the majority of the company were British subjects, and they had received an express assurance from Mr. Jackson, the British Minister at Washington, that "in case of a war between the two nations, they would be

Mr. Astor's adventure.

respected *as British subjects and merchants.*" (Greenhow, p. 295.) Mr. Astor stipulated to retain half the shares for himself, and in return to bear all the losses for the first five years, during which period the parties had full power to abandon and dissolve the association. A detachment of the partners arrived at the Columbia River in 1811, and formed a trading establishment on the southern bank of the river, on Point George, not far from the mouth, which they named Astoria. Mr. Washington Irving, who had his information from Mr. Astor himself, terms their establishment "a trading house." (Chap. ix.) Not long after their arrival they received information from the Indians, that the North-west Company had erected a trading house on the Spokan River, which falls into the north branch of the Columbia, and they were preparing to dispatch a rival detachment to act as a counter-check to this establishment, when Mr. David Thomson, with a party under the protection of the British flag, having descended the Columbia from its northernmost source, arrived at Astoria. On his return Mr. Stuart, one of the partners of the Pacific Fur Company, accompanied Mr. Thomson's party a considerable distance up the Columbia River, and established himself for the winter at the junction of the Okanegan with the Columbia, at about 140 miles from the Spokan River; here Mr. Stuart, according to Mr. Washington Irving, considered himself near enough to keep the rival establishment in check. It would thus appear that the earliest settlement on the Spokan River was made by the North-west Company, and from Mr. Washington Irving's ac-

Astoria.

North-west Company.

count, seems almost to have preceded the foundation of Astoria; for whilst the Astorians were occupied with their building, they heard from the Indians that white men "were actually building houses at the Second Rapids." If, however, it was not antecedent, it was at least contemporaneous.

Astoria not a national settlement.

It can hardly be contended that the settlement at Astoria had a definite national character, much less that it could impart the national sovereignty of the United States to the territory, wherein it was established. The Astorians might perhaps maintain their claim to the domain (dominium utile), but that they should set up a title to the sovereignty (dominium eminens), or be held to convey a title to any state which should choose to assert it through them, is not conformable to the practice of nations. But the plenipotentiaries of the United States contend that they have an exclusive title to the entire valley of the Columbia, by virtue of this settlement. Spain, however, did not admit this title in the negotiations preceding the Florida Treaty, nor did the United States venture to set it up. When Don Luis de Onis, in resuming the negotiations, proposed, in his letter of January 16. 1819 (British and Foreign State Papers, 1819–20, p. 565.), to concede, on the part of his Catholic Majesty, as the boundary between the two states, "a line from the source of the Missouri, westward, to the Columbia River, and along the middle thereof to the Pacific Ocean," and trusted it would be accepted, as presenting "the means of realising the President's great plan of extending a navigation from the Pacific to the remotest points of the

The Treaty of Florida.

northern seas, and of the ocean;" no claim was advanced to the valley of the Columbia; but Mr. Adams briefly stated, in reply, that "the proposal to draw the western boundary line between the United States and the Spanish territories on this continent, from the source of the Missouri to the Columbia River, cannot be admitted." Again, when the Spanish commissioner, in his letter of February 1. 1819, stated that, "considering the motive for declining my proposal of extending the boundary line from the Missouri to the Columbia, and along that river to the Pacific, appears to be the wish of the President to include within the limits of the Union all the branches and rivers emptying into the said River Columbia," and proposed to draw the boundary along the River S. Clemente, or Multnomah, to the sea; and delivered a project of a treaty, in which it was stipulated that his Catholic Majesty should cede all the country belonging to him eastward of the boundary line to the United States; no original title to the entire valley of the Columbia, no claim to the settlement of Astoria, as a national settlement, was advanced by the United States: yet Astoria was on the western side of the Multnomah or Willamette River, as it is now called, and was assumed in both the above proposals to be beyond the limits of "the dominions of the Republic."

Astoria sold to the North-west Company.

Astoria passed into the hands of the North-west Company by peaceable transfer. It was sold by the partners resident in the establishment, after they had dissolved the association, which, by the terms of the contract, the parties had power to do. When Captain Black, in his Britannic Majesty's

sloop-of-war the Raccoon, arrived there in 1813, he did not capture Astoria, for it was not the property of an enemy, but he took possession of it in the name of his Britannic Majesty, and hoisted the British ensign; thereby formally asserting the sovereignty of Great Britain over the property of British subjects. In 1818, the government of the United States was formally placed in possession of Astoria; and this was the first occasion on which an act of sovereignty was exercised by that Power. Mr. Calhoun states that this act "placed our possession where it was before it passed into the hands of British subjects." On the contrary, it placed Astoria in the hands of the government of the United States, in which hands it had never been before: for, antecedently to the transfer to the North-west Company by purchase, it was in the hands of an association, the majority of which were British subjects, who could not, according to any received principle of international law, be held to have represented the sovereignty of the United States.

The United States placed in possession of Astoria.

It was admitted by Lord Castlereagh, in the discussions with Mr. Rush antecedent to the restoration of Astoria, that the United States were entitled to be reinstated there, and "to be the party in possession *whilst treating of the title.*" At that time the United States had confined their claims to the restitution of a post, which, as they asserted, "had been established by them on the Columbia River, and had been taken during the war, and consequently came within the provisions of the first article of the Treaty of Ghent." Mr. Bagot, in

his reply to Mr. Adams, of 26th November 1817 (British and Foreign State Papers, 1821–22, p. 461.), stated that, "from the reports made to him, it appeared that the port had not been captured during the late war, but that the Americans had retired from it under an agreement made with the North-west Company, who had purchased their effects, and who had ever since retained peaceable possession of the coast." The whole discussion was thus evidently limited to the settlement at Astoria; and Lord Castlereagh admitted, on the statement of the United States, that they had a primâ facie claim to be reinstated in the post, in conformity to the provisions of the treaty, and *to be the party in possession whilst treating of the title.*

Mr. Calhoun's argument.

Mr. Calhoun, in the further course of his argument, contends that, after this admission on the part of Lord Castlereagh, the Convention of 1818 "preserved and perpetuated *all our claims to the territory*, including the acknowledged right to be considered *the party in possession;*" and Mr. Buchanan, in still more explicit language, maintains the same position. "He claims, and he thinks he has shown, a clear title, on the part of the United States, *to the whole region drained by the Columbia*, with the right of being *reinstated and considered the party in possession, whilst treating of the title;* in which character he must insist on their being considered, in conformity with *positive treaty stipulations.* He cannot, therefore, consent that they shall be regarded, during the negotiations, merely as *occupants in common* with Great Britain. Nor can he, while thus regarding their rights, present a

counter-proposal, based on the supposition of joint occupancy merely, until the question of title to the territory is fully discussed." This argument is essentially unsound throughout. The title of the United States to possess the settlement, in other words, *not to be excluded from the territory*, is strangely confounded with the title *to exclude the British from the entire territory*. These titles are assumed to be identical, being most distinct. Great Britain does not require to be considered as an *occupant in common of Astoria:* the United States were never admitted *by positive treaty stipulations* to be the party entitled to be considered *in possession of the whole region of the Columbia*, which Mr. Buchanan maintains to have been conceded by Lord Castlereagh. But Great Britain does require to be considered as *an occupant in common of the region of the Columbia*, and the United States is entitled to the *right of adverse possession as far as the settlement at the mouth of the river* on its south bank is concerned. What, however, is the effect of such a right of possession? Simply that, as far as the settlement of Astoria is concerned, it is not necessary for the United States to prove its *right of dominion*. Its *right of possession* is a valid right, unless a right of dominion can be established by some other Power. But Great Britain asserts no right of dominion,—she does not claim to evict the United States from its actual possession,—but, as she claims no exclusive title for herself, so she recognises no exclusive title in any other Power. The principle of a mutual right of occupancy of the territory was admitted,

Confusion of the settlement with the territory.

when it was agreed that the United States should be placed in possession *sub modo*, whilst treating of the title. The question, however, between the two governments was not one of *law*, but of *fact*. Issue had been joined in the previous letters between the Secretary of State and the Minister of Great Britain, at Washington: whilst the former asserted Astoria had been captured during the war, the latter maintained that it had passed into the hands of the North-west Company by peaceable purchase.

The question at issue in 1818.

The United States asserted that Astoria had become a British possession by virtue of the *jus belli*, the operation of which was in this case expressly suspended by the first article of the Treaty of Ghent: on this plea they claimed that it should be restored to them. Great Britain, on the other hand, maintained that it had passed into the hands of the North-west Company by peaceable purchase: on this plea they contended that the United States were not entitled to demand its restoration. When, therefore, the United States acquiesced in the proposal of Lord Castlereagh, they admitted the legal effect of the fact asserted by Great Britain, if it could be substantiated. They thus admitted the common right of Great Britain to form settlements, by agreeing to treat of the title on the ground alleged by Great Britain, precisely as Great Britain admitted a corresponding right in the United States, by agreeing to discuss the alleged fact that Astoria had passed into the hands of the British *jure belli*, by which it was implied that it had been antecedently a possession of the United States. We thus find in the negotiations of 1818, which terminated

Mr. Rush's claim.

in the Convention of the 20th October, concluded fourteen days after the actual restoration of Astoria, that Messrs. Gallatin and Rush nowhere hint at an exclusive title in the United States. "We did not assert," they say in their letter to Mr. Adams, of October 20. 1818, "that the United States had a *perfect right* to that country, but insisted that their claim was at least good against Great Britain." (British and Foreign State Papers, 1819–20, p. 169.) Yet, in the face of this solemn admission, at the commencement of the earliest negotiations, and of the fact that the title has been treated of on so many occasions, Mr. Buchanan now asserts that "our own American title to the extent of the valley of the Columbia, resting as it does on discovery, exploration, and possession—a possession acknowledged by a most solemn act of the British government itself, is a *sufficient assurance against all mankind;* whilst our superadded title derived from Spain *extends our exclusive rights* over the whole territory in dispute against Great Britain." Mr. Buchanan's assertion.

Such is the outline of the grounds on which the United States set up an exclusive title to the entire valley of the Columbia, that is, a title to exclude Great Britain from making settlements there. Mr. Buchanan observes, that this title is "older than the Florida Treaty of February 1819, under which the United States acquired all the right of Spain to the north-west coast of America, and exists independently of its provisions. Even supposing, then, that the British construction of the Nootka Sound Convention was correct, it could not apply to this

portion of the territory in dispute. A convention between Great Britain and Spain, originating from a dispute concerning a petty trading establishment at Nootka Sound, could not abridge the rights of other nations. Both in public and private law, an agreement between two parties can never bind a third, without his consent, express or implied."

The derivative title of Spain.

Mr. Buchanan thus appears disposed to renounce the derivative title of Spain, upon which, as completing the defects in the original title of the United States, considerable stress had been elsewhere laid,

Inconsistency of the United States.

"supposing the British construction of the Nootka Convention to be correct:" in other words, the commissioners of the United States claim to avail themselves of the provisions of this convention, if they can be made to support their title, but to repudiate them, if they should be found to invalidate it, which of course is inadmissible. But when Mr. Buchanan says, "A convention between Great Britain and Spain *could not abridge the rights of other nations*," though the proposition be abstractedly true, yet on this occasion it does not apply. First of all, because Great Britain, in recognising the right of Spain to make settlements on the north-west coast in places not yet occupied, did not either at the time of the convention, or subsequently, recognise such a right as an exclusive right in respect to other nations. Secondly, because Spain, in recognising the right of Great Britain to make settlements in an analogous manner, did not thereby declare other nations excluded from making settlements; in fact, there is not a single word within "the four corners" of the treaty, which can be

Effects of the Nootka Convention.

held to abridge the rights of other nations. Thirdly, because the United States, at the time when the convention was concluded, had no other right than that of making settlements, which Great Britain has never once maintained that the Nootka Convention abridged, nor does it at this moment contend so.

If, on the other hand, the United States had an *exclusive title* to the valley of the Columbia before the Treaty of Florida, or in other words, as asserted in 1824, to the entire territory between 51° and 42°, and that title existed independently of its provisions, it is difficult to understand the object of the protracted negotiations between Don Luis de Onis and Mr. Adams, which resulted in his Catholic Majesty first withdrawing from the Rocky Mountains to the Columbia River, then from the Columbia to the Multnomah or Willamette River, and finally ceding all his rights, claims, and pretensions to the territory north of the parallel of 42°. Mr. Buchanan's position is untenable in the face of the negotiations antecedent to the Florida Treaty.

Contrast of the claims of the two governments.

The original title, however, of the United States, does not satisfy the requirements of the law of nations, in the extent in which it is maintained to be effective. Let it be kept in mind that Great Britain has never claimed the exclusive privilege of settling on the north-west coast of America, to the north of the parts occupied by Spain, but she maintains her right not to be excluded from any places not already occupied. The United States, on the other hand, are not satisfied with claiming a right to make settlements, but they assert a right to ex-

clude Great Britain from making settlements, and this, too, by virtue of an act performed by a private citizen, without any commission from the state, subsequent to the time when the right of Great Britain to make settlements had been formally recognised by Spain in a solemn treaty, and was thus *patent* to the civilised world.

Mr. Calhoun's admission.

This very act, however, Mr. Calhoun admits to be defective for the purpose of establishing an exclusive title, when he says, "Time, indeed, so far from impairing our claims, has greatly strengthened them since that period, for since then the Treaty of Florida transferred to us all the rights, claims, and pretensions of Spain to the whole territory, as has been stated. In consequence of this, our claims to the portion drained by the Columbia River,—the point now the subject of consideration,—have been *much strengthened* by giving us the *incontestable claim to the discovery of the river by Heceta* above stated."

It is thus admitted, that the first entering of the River Columbia by Gray was not a *discovery*, but an *exploration*. There can be *no second discovery* for the purpose of founding an exclusive title. Heceta's discovery is incontestable for the *purpose of barring any subsequent claim by discovery*, and the original title of the United States, resolves itself into a title founded upon the first exploration of the entrance of the Columbia from the sea, and on the first exploration of its southern branches from the Rocky Mountains. Such a title, however, can neither from the nature of things, nor the practice of nations, establish a right to exclude all other nations from every part of the entire valley of the

Original title of the United States.

Not an exclusive title.

Columbia. On the contrary, the assertion of such a right is altogether at variance with *the comity of nations*, on which alone title by discovery rests. For, if the United States maintain that the discovery of the Columbia River, for the purpose of establishing a territorial title, dates from the enterprise of Gray, they set aside the discovery of Heceta, in opposition to the comity of nations; yet it is upon this very comity of nations that they must rely to obtain respect for their own asserted discovery.

But when Mr. Calhoun maintains that, by the Florida Treaty, the title of the United States was much *strengthened* by the acquisition of the incontestable claim to the discovery of the river by Heceta, he admits that the title of the United States was *an imperfect title* before that treaty; for a perfect title is incapable of being strengthened, — *exclusiveness does not admit of degree.* That the title of the United States to form settlements in the parts not occupied was strengthened by the Florida Treaty, is perfectly true. Great Britain, before that treaty, *might have* refused to recognise any title in the United States under the general law of nations; but after that treaty, she would be precluded by the provisions of the Nootka Sound Convention, as the United States would thenceforward represent Spain, and allege a recognised right of making settlements under that convention; but, that the original title of the United States, which was not an exclusive title by the law of nations, could become an exclusive title against Great Britain by the acquisition of the title of Spain, which was expressly not exclusive under a treaty concluded

Exclusiveness does not admit of degree.

Imperfect title of Spain.

with Great Britain, independently of other considerations which were duly weighed at the conclusion of the Nootka Convention, requires only to be stated in plain language to carry with it its own refutation.

No rights granted by the Nootka Convention.

The effects of the Nootka Convention, or rather Convention of the Escurial, have already been discussed in the two preceding chapters. Mr. Buchanan, in his letter of July 12. 1845, says, "Its most important article (the third) *does not even grant in affirmative terms the right* to the contracting parties to trade with the Indians and to make settlements. It merely engages in negative terms, that the subjects of the contracting parties 'shall not be disturbed or molested' in the exercise of *these treaty-privileges.*" Surely there is a contradiction of ideas in the above passages. How can the right to trade with the Indians and to make settlements be termed a *treaty-privilege* in the latter sentence, when in the former sentence it is expressly denied to have been *granted* by the treaty?

Mr. Buchanan's statement.

Mr. Buchanan, however, in asserting that the third article did not *grant in affirmative terms the right* specified in it, adopts precisely the same view that the British commissioners have throughout maintained; namely, that the third article did not contain a *grant*, but a mutual *acknowledgment* of certain rights in the two contracting parties, with respect to those parts of the north-western coast of America not already occupied. Mr. Buchanan, however, in a subsequent letter says, "The Nootka Convention is arbitrary and artificial in the highest degree, and is anything rather than the mere acknowledgment of simple and elementary principles conse-

crated by the law of nations. In all its provisions it is expressly confined to Great Britain and Spain, and acknowledges no right whatever in any third Power to interfere with the north-west coast of America. Neither in its terms, nor in its essence, does it contain any acknowledgment of *previously subsisting territorial rights* in Great Britain, or any other nation. It is strictly confined to future engagements, and these are of a most peculiar character. Even under the construction of its provisions maintained by Great Britain, her claim does not extend to *plant colonies*, which she would have had a right to do under the law of nations, had the country been unappropriated; but it is limited to a mere right of joint occupancy, not in respect to any part, but to the whole, the sovereignty remaining in abeyance. And to what kind of occupancy? *Not separate and distinct colonies, but scattered settlements*, intermingled with each other, over the whole surface of the territory, for the *single purpose of trading* with the Indians, to all of which the subjects of each Power should have free access, the right of exclusive dominion remaining suspended. Surely, it cannot be successfully contended that such a treaty is 'an admission of certain principles of international law,' so sacred and so perpetual as not to be annulled by war. On the contrary, from the *character of its provisions*, it cannot be supposed for a single moment that it was intended for any purpose but that of a mere *temporary arrangement* between Great Britain and Spain. The *law of nations* recognises no such principles, in regard to unappropriated territory, as those embraced in this

treaty, and the British plenipotentiary must fail in the attempt to prove that it contains 'an admission of certain principles of international law' which will survive the shock of war."

Examination of the argument.

Almost all the topics in the above passage have been already discussed in the two previous chapters, as they were very dexterously urged by the commissioners of the United States in the course of the previous negotiations; so that a detailed examination of them on this occasion will not be requisite. The first article, however, does contain an acknowledgment of *previously subsisting territorial rights*, for it was agreed that *the buildings and tracts of land*, of which the subjects of his Britannic Majesty were *dispossessed*, about the month of April 1789, by a Spanish officer, shall be *restored* to the said British subjects." This article of the treaty, when placed side by side with the declaration on the part of his Catholic Majesty of an exclusive right of forming establishments at the port of Nootka, and with the counter-declaration on the part of his Britannic Majesty of his right to such establishments as his subjects might have formed, or should be desirous of forming in future, at the said bay of Nootka, cannot but be held to contain an acknowledgment on the part of Spain of a previously subsisting territorial right in Great Britain. In respect to its provisions for the future, and to the interpretation which the commissioners of the United States have sought to affix to the word "settlement," namely, that mere trading posts or factories were contemplated, it has been shown in the previous chapters, that, from the language of

the treaty itself, in which the word "settlements" is, in three other places, employed to designate territorial possessions, and from the general language of treaties, such as the Treaty of Paris in 1763, as contrasted with the Treaty of London in 1815, such a view is quite incapable of being satisfactorily established: on the contrary, it is by implication refuted by the very stipulations in the fifth article, for free access and unmolested trade with these very settlements. Again, the character of the provisions of the convention is alleged to evince the intention of its being a mere temporary arrangement. Such, however, was not the opinion of Mr. Fox, in respect to the sixth article, when he charged the British Minister with having renounced the previous rights of Great Britain *to plant colonies* in the unoccupied parts of South America; nor of Mr. Stanley, in reference to the third article, when he said, "The southern fisheries will now be prosecuted in peace and security;" nor of the Duke of Montrose, when he said, "The great question of the southern fishery is *finally* established, on such grounds as must prevent all future dispute;" nor of Mr. Pitt, when he said, that "it was evident that no claim (of Spain's) had been conceded,—that our right to the fisheries had been acknowledged,—and that satisfaction had been obtained for the insult offered to the Crown," (Hansard's Parliamentary History, vol. xxviii. p. 970.); or, as otherwise reported, "the claims of Spain had been receded from, and every thing stated in the royal message had been gained," (Gentleman's Magazine, vol. lxx. A.D. 1790, part ii.

Debates in Parliament in 1790.

p. 1160.) Mr. Fox's chief cause of complaint against the treaty was, that it was a treaty of concessions on the part of Great Britain, and not of acquisitions: and when Mr. Grey, in taunting the Minister, complained, as instanced by Mr. Buchanan, "that where we might form a settlement on one hill, the Spaniards might erect a fort upon another," he in fact complained, not that we had not maintained a right to form territorial settlements, and to exercise acts of sovereignty in them, but that we had not asserted this right so as to exclude the Spaniards entirely from the country. Reference has been made to these debates in the British Houses of Parliament, rather to illustrate than to prove the fact of the treaty having been regarded in a very different light from a mere temporary engagement, by those who contended that Great Britain had conceded more advantages than she had acquired. Mr. Pitt, indeed, denied Mr. Fox's positions, and in answer to them maintained, "that though what this country had gained consisted not of new rights, it certainly did of new advantages. We had before a right to the Southern Whale Fishery, and a right to navigate and carry on fisheries in the Pacific Ocean, and to trade on the coasts of any part of it north-west of America: but that right not only had not been acknowledged, but disputed and resisted: whereas, by the convention, it was *secured to us*—a circumstance, which, though *no new right*, was a *new advantage*." That the condition of intermixed settlements, in regard to unappropriated lands, is clearly recognised by the law of nations, as consistent with the full and ab-

Mr. Pitt's declaration.

solute independence of two separate nations, has been already shown by reference to acknowledged authorities on international law, so that Mr. Buchanan's entire argument appears to have been advanced rather upon specious than solid grounds.

There are several other arguments in the correspondence of the Commissioners of the United States that might deserve attention, were it not that the discussion would exceed the contemplated limits of this work, which has probably already attained too large a bulk. It has, however, been found impossible to compress the inquiry within narrower bounds, without incurring the double risk, on the one hand, of appearing to those who are imperfectly informed on the subject, not to have given sufficient consideration to the arguments of the Commissioners of the United States,—and, on the other hand, of causing to those who are well acquainted with the facts, some dissatisfaction by too cursory an exposure of the unsoundness of those arguments. Besides, the course adopted has been thought to be well warranted by the importance of the question, and to be at the same time more consistent with the respect due to the distinguished negotiators.

CHAPTER XVIII.

REVIEW OF THE GENERAL QUESTION.

Presumption in Favour of the Common Right of Great Britain. — No exclusive Rights in Spain or the United States. — Convention of 1818. — Convention of 1827. — Mr. Rush's Admission in 1824, that the United States had not a perfect Right.—Cession of Astoria. Course of the Negotiations. — Messrs. Rush and Gallatin in 1818. — Mr. Rush in 1824. — Mr. Gallatin in 1826. — Negotiations of 1844-5. — Mr. Buchanan's Offer. — Mr. President Polk's Message to Congress. — Consequences involved in the two Proposals. Valueless Character of the Country north of 49°. — Consequences of the Convention of 1827 being abrogated. — Present Condition of the Northern and Southern Banks of the Oregon. — Voyages of British Subjects: — Drake,— Cook,—Vancouver. — Settlements of Great Britain. — Settlements of the United States. — Rule of Partition advanced by the United States in their Negotiations with Spain. — Its Application to the present Question. — Objections to it. — Mr. Pakenham's Letter of Sept. 12. 1844. — Suggestion as to a further Proposal on the Part of Great Britain. — Mr. Webster's Anticipations of the future Destinies of Oregon. — Mr. Calhoun's Declaration in 1843.

THE failure on the part of the United States to make out their *exclusive claim* establishes at once a conclusive inference in favour of the *common title* of Great Britain. The proof required in the two cases is essentially distinct. Where two nations are already settled in a country, the *onus probandi* rests with the party that seeks to exclude the other. Independent of the presumption from inference, Great Britain has conclusive *primâ facie* evidence of a right to form settlements in the

country; first, in the recognition of this right by a Power which had asserted an exclusive title to the entire country under the guarantee of the Treaty of Utrecht, to which all the great colonial Powers in America were parties, but which ultimately abandoned it by the signature of the Convention of the Escurial: secondly, in the undisturbed enjoyment of this right during a period which, according to the Civil Law, to which all civilised nations agree in appealing for the arbitration of public differences between one nation and another, from the necessity of some common standard, constitutes a valid prescription, such as was recognised in the case of Russia by the United States in 1824, and by Great Britain in 1825; thirdly, in the partition having been the subject of repeated negotiations, and more especially from the proposals to negotiate both in 1824 and 1826 having originated with the United States, which thereby admitted the claims of Great Britain to be similar in *kind* with their own, though they might maintain them to be different in *degree*.

It seems to have been contended by the commissioners of the United States in the course of the last negotiation, that "whilst the proper title of the United States gave them exclusive rights against all mankind, *the superaddition* of the Spanish title extended their exclusive right as against Great Britain." (Letter of Mr. Buchanan, July 12. 1845.) The enjoyment, however, of the territory by Great Britain was antecedent to the proper title of the United States, whereas the possession of the United States can be accounted for consistently with the continuance of the common right of Great Britain,

which she claims by virtue of a title antecedent to such possession. But if the superadded Spanish title conferred an extension of exclusive rights on the United States, it must have been *proprio vigore* an exclusive title; and if so, valid against the United States themselves: so that, on that supposition, the proper right of the United States could not be an exclusive right. There cannot be two exclusive titles in different nations to the same country, and Great Britain would be expressly debarred by the provisions of the Convention of the Escurial from recognising an exclusive title in the United States, antecedent to their acquisition of the Spanish title by the Treaty of Florida, because she had recognised in 1790 the right of Spain, in common with herself, to settle in any places of the north-west coast of America not as yet occupied: whilst she could not recognise the rights which devolved to the United States from Spain, in 1819, as exclusive rights, in the face of her previous admission that the United States were entitled to be considered as the party in possession of Astoria whilst treating of the title, and in contravention to the third article of the Convention of 1818, which was grounded upon the basis of both the United States and Great Britain, as well as other Powers, having at that time claims to the country. In fact, Great Britain had acknowledged the common title of Spain before the time when the United States assert their own exclusive title to have commenced; and she had acknowledged the common title of the United States, pending the continuance of the recognised title of Spain: so that she is precluded

No exclusive right in Spain or the United States.

from recognising the title of either state to be an exclusive one, if she were even disposed to do so, by her own previous acts.

On the other hand, the United States themselves are precluded by their own previous acts from setting up either their own original title, or their derivative title from Spain, as an exclusive title.

By the convention, signed at London, of October 20. 1818, it was agreed in the third article, "that any country that may be claimed by either party on the north-west coast of America, westward of the Stony Mountains, shall, together with its harbours, bays, and creeks, and the navigation of all the rivers within the same, be free and open for the term of ten years from the date of the present convention, to the vessels, citizens, and subjects of the two Powers; it being well understood that this agreement is not to be construed to the *prejudice of any claim which either of the two contracting parties may have to any part of the said country*, nor shall it be taken to affect the *claims of any other Power or state* to any part of the said country; the only object of the high contracting parties, in that respect, being to prevent disputes and differences *among themselves*." Convention of 1818.

This article, in its very terms, implies the renunciation by both parties of an exclusive right to the entire territory, not merely in reference to each other, but still further in reference to other Powers.

By the convention, signed at London, of August 6. 1827, all the provisions of the third article of the Convention of 1818 were indefinitely extended, subject to abrogation, at the option of Convention of 1827.

either party, upon twelve months' notice; and by the third article it was stipulated, that "nothing contained in this convention, or in the third article of the convention of the 20th October, 1818, hereby continued in force, shall be construed to *impair, or in any manner affect, the claims* which either party may have to any part of the country westward of the Stony or Rocky Mountains."

Mr. Rush's admission.

What those claims were on the part of the United States at the time of the Convention of 1818, was explicitly stated by Messrs. Gallatin and Rush, the Commissioners of the United States, before it was concluded. In their letter to Mr. Adams, of October 20. 1818, which commences with these words, "We have the honour to transmit a convention, which we concluded this day with the British plenipotentiaries," they state in reference to the negotiations, "We did not assert that the United States had a *perfect right* to that country (i. e., the country westward of the Stony Mountains), but insisted that their claim was at least good against Britain." In other words, the plenipotentiaries on the part of the United States, at the first opening of the negotiations respecting the definitive adjustment of the mutual claims of the two parties westward of the Rocky Mountains, which has been a subject of subsequent negotiation on three separate occasions, limited their claims expressly to an imperfect right,—a right in common with Great Britain. They had already, in assenting to be placed in possession of Astoria "whilst treating of the title," according to Lord Castlereagh's agreement, as recorded by

Cession of Astoria.

Mr. Rush, admitted the *common right* of Great Britain to possess settlements in that country. The United States had contended that Astoria had become a British possession *jure belli*, and Great Britain had covenanted by the first article of the Treaty of Ghent to restore all her acquisitions made *jure belli*. Great Britain, on the contrary, had maintained that Astoria had passed into the hands of the North-west Company by peaceable transfer. In agreeing then to treat of the title, the two parties agreed to discuss these two facts, the former implying the common right of the United States to make settlements, the latter, the common right of Great Britain. It was idle to enter into an inquiry into the respective truth of the alleged facts, unless it followed that the title of the party that could substantiate its statement would thereby be at once established. This however, implied a possibility on either side of a rightful title, on the side of the United States by the Treaty of Ghent, on the side of Great Britain by the Law of Nations. The United States relied upon the *status ante bellum*, the lawfulness of which, in this particular case, was admitted by Great Britain's consenting to entertain such a title; Great Britain rested on the received principles of international law, according to which her subjects, in common with those of other states, were entitled to make peaceable acquisitions in such parts of the north-west coast as were not yet occupied by any other civilised nation, which the United States could not gainsay. After the consent of both sides to treat of the title upon this footing, it is out of the ques-

tion to suppose that it is competent for either party on the renewal of negotiations to set up an exclusive title: such a proceeding would be essentially *aggressive* in its character, and would be altogether inconsistent with the tacit admission on both sides, when they agreed to entertain the consideration of each other's title.

Course of the negotiations.

Let us now proceed to examine what has been the conduct of the two parties throughout the course of the various negotiations.

Messrs. Rush and Gallatin in 1818.

It having been expressly stated in 1818, by Messrs. Rush and Gallatin, that the United States *did not assert a perfect right to the country*, Mr. Rush, in his letter to Mr. Adams, proceeds to state, that "when the plenipotentiaries of the United States, on their part, stated, 'that there was no reason why, if the two countries extended their claims westward, the boundary limit of the 49th parallel of north latitude *should not be continued to the Pacific Ocean*,' the British commissioners, though they made no formal proposition for a boundary, intimated that the river itself was the most convenient that could be adopted, and that they would not agree to any that did not give them the harbour of the mouth of the river, *in common with the United States*."

The history of the subsequent negotiations will show that on each occasion the United States have increased their claims and reduced their concessions, while Great Britain has not only not increased her claims, but on the contrary has advanced in her concessions.

Mr. Rush in 1824.

Thus, in 1824, Mr. Rush commenced the negoti-

ation by claiming for the United States, "in their own right, and as their absolute and exclusive sovereignty and dominion, *the whole of the country* west of the Rocky Mountains, from the 42d to at least as far up as the 51st degree of north latitude." He further said, that "in the opinion of my Government, the title of the United States to the whole of that coast, from latitude 42° to as far north as 60°, was superior to that of Britain or any other Power: first, through the proper claim of the United States by discovery and settlement; and secondly, as now standing in the place of Spain, and holding in their hands her title."

In accordance with these views, Mr. Rush annexed to the Protocol of the 12th Conference a formal proposal, that Great Britain should stipulate that her subjects should make no settlement on the north-west coast of America, *or the islands adjoining*, south of the 51st degree of latitude; the United States stipulating, that none should be made by her citizens north of the 51st degree. The British negotiators in reply proposed to accede to a line along the 49th parallel of north latitude as far as the north-easternmost branch of the Columbia, and thence down the middle of that river to the sea, the navigation of the river to be for ever free to both parties. The commissioner of the United States, on the other hand, would only vary his proposed line to the south, so as to consent that it should be the 49th instead of the 51st degree of north latitude, which was the original proposal in 1818, with the navigation of the river free to both parties.

On the negotiations being resumed in 1826, Mr.

Mr. Gallatin in 1826.

Gallatin, on the part of the United States, having set up a new ground of title founded on the acquisition of Louisiana from France in 1803, and its contiguity through the intervening chain of the Rocky Mountains to the territory under discussion, limited his offer to the 49th parallel with the navigation of the river free to both parties, as before, whilst the British commissioners expressed their willingness to yield to the United States, in addition to what they first offered, a detached territory, extending, on the Pacific and the Strait of Fuca, from Bullfinch's Harbour to Hood's Canal, and to stipulate that no works should at any time be erected at the mouth or on the banks of the Columbia, calculated to impede the free navigation of that river by either party.

This last stipulation was evidently adapted to obviate a difficulty which Mr. Prevost, the agent of the United States at the restoration of Astoria, had suggested to the United States Government as early as Nov. 11. 1818, in his report upon the Columbia River: — "In addition to this, it is susceptible of entire defence, because a ship, after passing the bar, in order to avoid the breaking of the sea on one of the banks, is obliged to bear up directly for the knoll forming the cape, at all times, to approach within a short distance of its base, and most frequently there to anchor. Thus a small battery erected on this point, in conjunction with the surges on the opposite side, would so endanger the approach as to deter an enemy, however hardy, from the attempt." (British and Foreign State Papers, 1821–22, p. 467.)

In the negotiations of 1844–5, lately brought to a close, Mr. Pakenham, the British plenipotentiary at a very early period, proposed in a letter of Aug. 26. 1844, in addition to what had already been offered on the part of the United States, and in proof of the earnest desire of her Britannic Majesty's Government to arrive at an arrangement suitable to the interests and wishes of both parties, to undertake to make free to the United States any port or ports which the United States Government might desire either on the mainland, or on Vancouver's Island, south of 49°; and on Mr. Calhoun's declining to make any counter-proposal, based on the supposition of the United States and Great Britain being occupants in common, Mr. Pakenham suggested "an arbitration, to the result of which both parties should be bound to conform by the interchange of notes, as the most fair and honourable mode of settling the question," which Mr. Calhoun declined. Mr. Buchanan, on resuming the negotiations after the election of Mr. Polk to the Presidency of the United States, concluded his communication of July 12. 1845 to Mr. Pakenham, by stating that the President would not have consented to yield any portion of the Oregon territory had he not found himself embarrassed, if not committed, by the acts of his predecessors, and that he was instructed to propose the 49th parallel as before to the Pacific Ocean, offering at the same time to make free any port or ports on Vancouver's Island south of this parallel, which the British Government may desire.

Negotiations of 1844-5.

Mr. Buchanan's offer.

"This proposal," as justly observed by Mr. Pa-

kenham, in his reply of July 29. 1845, "was less than that tendered by the American plenipotentiaries in the negotiation of 1826, and declined by the British Government. On that occasion it was proposed that the navigation of the Columbia should be made free to both parties."

The President's Message.

The President of the United States, in his message to Congress of the 1st of December, 1845, after briefly reviewing the course of the several negotiations, concludes that portion of his message with these remarkable words:—

"The civilised world will see in these proceedings *a spirit of liberal concession* on the part of the United States; and this Government will be relieved from all responsibility which may follow the failure to settle the controversy."

Mr. Buchanan had stated to the same effect, at the conclusion of his letter of August 30. 1845, that not "only respect for the conduct of his predecessors, but a sincere desire to promote peace and harmony between the two governments," had actuated the President to offer *a proposition so liberal* to Great Britain.

"And how has this proposition been received by the British plenipotentiary? It has been rejected without even a reference to his own Government. Nay, more; the British plenipotentiary, to use his own language, 'trusts that the American plenipotentiary will be prepared to offer some further proposal for the settlement of the Oregon question more consistent with fairness and equity, and with the reasonable expectations of the British Government.'"

It could hardly require a reference from Mr. Pakenham to the British Government at home, to satisfy him that he should at once decline to accept a less

liberal offer than that which his Government had already declined on two previous occasions. Surely the meaning of the word "liberal" must have acquired a different acceptation in the United States from what it bears in the mother-country, or the notions of what constitutes "a spirit of liberal concession," must be very different on the eastern and western sides of the Atlantic; for, in the usual signification of the word in the mother-country, it would be bitter irony to apply such a term to the proposal authorised by President Polk, expressly, as alleged, in deference to what had been done by Presidents Munroe and Adams. It is an offer on the part of Mr. Polk to share a worthless haven with Great Britain, when his predecessors have offered to share the Great River of the West.

Consequences involved in the two proposals.

The offer of Great Britain, when first made by her in 1824, would have imposed upon her at that time, if accepted by the United States, as likewise at the present time, the necessity of ultimately breaking up four or five settlements, formed by her subjects within the limits that would become prohibited; and which they had formed under the belief of their full right, as British subjects, to settle there. "But their Government was willing to make these surrenders, for so they considered them, in a spirit of compromise, on points where the two nations stood so divided," (British and Foreign State Papers, 1825-26, p. 519.); whereas the United States would not be required to abandon a single settlement; on the contrary, they would retain the fertile valley of the Willamette, where their settlers are mostly located. The proposal of the United States,

on the other hand, would require that Great Britain should abandon the majority of her settlements, and amongst these, Fort Vancouver, the depôt of the Hudson's Bay Company, from which fourteen other settlements receive their supplies; that she should resign the use of the river, the free navigation of which is absolutely necessary for the transport of outfits and their returns; that she should be precluded, not merely from the harbour within the river, but from the harbours in Admiralty Inlet, the only really valuable harbours on the coast; that she should give up the agricultural district round Paget's Sound, where the fixed population of British Canadians are located, and which bears a similar relation to the future destinies of Northern Oregon, that the valley of the Willamette does to those of Southern Oregon; and in this proposal Mr. Buchanan, in his letter of July 12. 1845, "trusts that the British Government will recognise the President's *sincere and anxious desire to cultivate the most friendly relations* between the two countries, and to manifest to the world that he is actuated *by a spirit of moderation.* In return Great Britain is to be allowed to retain a district of barren territory in Northern Oregon, in which Captain Wilkes has officially reported to the United States, that "there is no part on the coast where a settlement could be formed that would be able to supply its own wants," and which even for hunting purposes is so unproductive, that the Hudson's Bay Company have found it expedient to lease other hunting grounds within the Russian territories; and this too, when the future value of the country will consist, not in its capability to supply the fur-

Valueless character of the country north of 49°.

trader with the skins of the beaver and sea-otter, but in the adequacy of its grazing and agricultural produce to support a fixed body of inhabitants, as well as to victual the ships of various nations engaged in the China trade, and in the fisheries of the South Sea. Harder conditions could not well have been dictated by a conquering to a conquered nation as the price of peace, neither do they accord with that spirit of just accommodation with which Mr. Rush, in 1824, expressly declared the Government of the United States to be animated, nor with those principles of mutual convenience which it was then agreed on both sides to keep in view, in order to further the settlement of their mutual claims.

Consequences of the Convention of 1827 being abrogated.

If the present convention should be abrogated by either party, the only object of which, according to the express declaration of the two contracting parties, was "to prevent disputes and differences amongst themselves," the existing condition of common occupancy does not thereby terminate. Each nation will still be bound to respect the settlements of the other. The mutual rights and obligations recognised by Great Britain and Spain in respect to each other, in the Convention of the Escurial, were recognised once and for all. The United States now stands in the place of Spain; she asserts that by the Treaty of Florida she holds in her hands all the Spanish title, but her hands are also bound by the obligations of Spain. By the Convention of the Escurial, the liberty of free access and unmolested trade with the settlements of each other, made subsequent to April 1789, was secured to either party: in other respects their

settlements would carry with them the independent rights, which the law of nations secures to the settlements of independent powers. Oregon would thus be dotted over with the settlements of subjects of Great Britain, and citizens of the United States, in juxta-position to each other, like the Protestant and Catholic cantons of Switzerland. The tribunals of the United States have decided in Washbourne's case (4 John's C. R. 108). and in other cases, "that the 27th. article of the Treaty of 1793, which provided for the delivery of criminals charged with murder and forgery, was only declaratory of the law of nations, and is equally obligatory on the two nations under the sanction of public law, and since the expiration of that treaty, as it was before." So far the recurrence of mutual outrages might be checked. Still, such a condition of things would leave open, as Mr. Rush observed in 1824, "sources of future disagreement, which time might multiply and aggravate." It is, therefore, for the interest of both parties, that a line of demarcation should be drawn, to prevent the possible conflict of jurisdiction. A few square miles, more or less, where the entire territory to be shared between the two nations extends over a district of more than 500,000 square miles, can form but a secondary element of consideration in the question. If we look to the original rights of the United States, as founded on use and settlement, they point exclusively to the southern bank, whilst those of Great Britain point, in a similar manner, to the northern. Citizens of the United States first explored the southern boundary of the Columbia, whilst subjects of Great Britain

Present condition of the northern and southern banks of the Columbia.

first explored the northern. The flag of the United States has been authoritatively displayed on the southern bank alone, whilst the British ensign has exclusively been hoisted on the northern. Whilst the valley of the Willamette in Southern Oregon is cultivated, according to Captain Wilkes, by settlers from other countries besides the United States, the agricultural establishments on the Cowlitz River, and on the shores of Puget's Sound, in Northern Oregon, are exclusively the creation of British subjects.

Voyages of British subjects.

Great Britain having expressly declared in 1826, that she claimed "no exclusive sovereignty over any portion of that territory," it has been thought unnecessary to set out in full her original title, as against the United States. It is impossible in the present day to ascertain how far Drake was authorised to make discoveries in the South Seas on account of his sovereign. We are informed by Stow the annalist, that he had obtained the approval of Queen Elizabeth to the plan of his expedition, through the interest of Sir Christopher Hatton; and the author of "The World Encompassed" affirms that he had *a commission from his sovereign*, and that she delivered to him a sword with this remarkable speech: — "We do account that he which striketh at thee, Drake, strikes at us." Captain Burney's opinion, however, seems most to accord with probability — that he had *no written commission*. The Queen, however, on his return, after a protracted inquiry before her Council, upon the complaint of the ambassador of Spain, approved and ratified his acts; and in her reply to the am-

bassador's remonstrances against Drake's territorial aggressions, expressly asserted, according to Camden, that as she did not acknowledge the Spaniards to have any title by sanction of the Bishop of Rome, so she knew no right they had to any places other than those they were in possession of. (Cf. supr. p. 161.) Vattel (b. xi. § 74.) states the law that, "if a nation or its chief approves and ratifies the act of the individual, it then becomes a public concern."

Drake. Drake thus appears to have been recognised as an instrument of his sovereign; and though the moderation of the British Government has led it not to insist upon Drake's discovery of the north-west coast as far as 48°, though it was coupled with formal acts of taking possession with the consent of the natives, because Great Britain did not follow it up within a reasonable time with actual settlements, still that discovery has not lost its validity as a bar to any asserted discovery of a later period.

Cook. On the other hand, the expeditions of Captains Cook and Vancouver satisfied all the conditions required by the law of nations for making discoveries and forming settlements. Unless Captain King, the companion of Cook, had published his account of the high prices which had been obtained by his sailors for the furs of the north-west coast of America in the markets of China, the American fur trader, as Mr. Greenhow terms Captain Gray, would never have resorted to the coast of Oregon. But before any trading vessel of the United States had appeared off those shores, Captain Cook had traced the American coast, from a little above Cape

Vancouver. Mendocino to Icy Cape, in 70° 29′; whilst Van-

couver was despatched in 1791 expressly by the British Government, to ascertain what parts of the north-west coast were open for settlement to subjects of Great Britain, in accordance with the 3d article of the Convention of the Escurial; and after an accurate survey reported, that the Presidio of San Francisco, in about 38°, was "the northernmost settlement of any description formed by the Court of Spain on the continental shore of North-west America." To Vancouver the civilised world was indebted for the first accurate chart of the entire coast. The important services rendered to navigation and science by Vancouver and Lieutenant Broughton, were fully acknowledged by Mr. Gallatin in the negotiations of 1826; yet all these, it is contended by the Commissioners of the United States, are entirely superseded by Captain Gray having first entered the mouth of the chief river of the country.

When Mr. Buchanan, therefore, at the commencement of his letter of August 30. 1845, states "that the precise question under consideration simply is, were the *titles* of Spain and the United States, when united by the Florida treaty on the 22nd February 1819, *good as against Great Britain*, to the Oregon territory as far north as the Russian line, in the latitude of 54° 40′?" and assumes, as a consequence, that if they were, it will be admitted this whole territory now *belongs* to the United States; he avails himself of the ambiguity of the term *title*, to infer that the establishment of a *common title* must lead to the admission of an *exclusive title*.

With much more reason might Great Britain have

Settlements of Great Britain.

set up an exclusive title against the United States, which she has, in the spirit of moderation, forborne to do. She might have said, "We were entitled by the general law of nations to make settlements in this country, as being unoccupied by any civilised nation. We were the first civilised nation that established a permanent occupation of it, which has never been abandoned, by a settlement in the year 1806 on Frazer's River. We have, since that time, steadily occupied the entire country north and south of the River Columbia, as far as the sources of Lewis River, where Fort Hall, the most southern settlement of the Hudson's Bay Company, supplies shelter and food to the wasted and famished settler from the United States, on his first entry into the promised land of Oregon." She might have said, "Before 1833, American citizens, on the testimony of their own countrymen, had no settlements of a permanent kind west of the Rocky Mountains. Even in the valley of the Willamette, where Captain Wilkes, in 1840, found not more than *sixty* families, many of them being British subjects, and late servants of the Hudson's Bay Company, the first settlements were made by officers of that Company, under the encouragement of the Company. It was owing to the report of the thriving condition of these farms having been carried to the United States by American trappers, that settlers from that country were led to undertake the long and perilous journey across the Rocky Mountains, which they would never have survived, had not the British settlements preceded their adventurous enterprise, and furnished them with supplies on their arrival." Yet

Settlements of the United States.

after an indisputable use and enjoyment of this country by British subjects for a greater period of time, than that which the United States admitted by treaty in 1824, to establish a valid title by prescription, in favour of Russia, from 60° north latitude to 54° 4′, against their own Spanish derivative title, the President of the United States declares, in his solemn message, his "settled conviction that the British pretensions of title could not be maintained to any portion of the Oregon territory, upon any principle of public law recognised by nations."

Rule of partition.

The plenipotentiaries of the United States, in their negotiations with Spain respecting the boundary of Louisiana, laid down this principle as adopted in practice by European Powers, in the discoveries and acquisitions which they have respectively made in the New World, — that "whenever one European nation makes a discovery, and *takes possession of any portion of that continent*, and another afterwards does the same at some distance from it, when the boundary between them is not determined by the principle above mentioned (viz. the taking possession of an extent of sea coast), the middle distance becomes such of course." (Cf. supr. Ch. XIII.) If we apply this rule to the settlement of the claims of Great Britain and the United States, either in respect to the conflict of their original titles, or in respect to the conflict of the title of Great Britain recognised in the Convention of the Escurial, with the title of the United States devolved to them by the Treaty of Washington, we shall find it confirm the reasonableness of the offer made by Great Britain. It was ascertained by Van-

couver, who had been despatched by his sovereign with this express commission, that the northernmost part of the north-west coast *already occupied* by Spain, at the signature of the Convention of 1790, was the Presidio of San Francisco, in about 38° north latitude. Vancouver at the same time ascertained that the settlements of the Russians extended as far south as Port Etches, at the eastern extremity of Prince William's Sound, a little to the south of 60°, and thus determined the extent of the common rights of Great Britain and Spain under the convention, which Mr. Pitt declared, as first Minister of the Crown of England, "he should esteem the Government of his Britanic Majesty highly culpable if they neglected to ascertain, by actual survey." (St. James's Chronicle, December 15. 1790.) Both the United States, however, subsequently to their acquisition of their derivative Spanish title, and Great Britain, have recognised, by separate treaties in 1824 and 1825, the territorial rights of Russia as far south as 54° 40′ north latitude, founded on the use and enjoyment of the coast by Russian subjects, during the intervening period between Vancouver's visit and the publication of the Imperial Ukase of September 16. 1821; so that the rights of Great Britain to form settlements under the Convention of the Escurial, are thus limited by her own act to the parts of the coast between 38° and 54° 40′, and the United States, by a similar act, have confined their derivative title to the same northern boundary. When, however, the United States claim to hold in their hands the title of Spain against Great

Britain, and upon the strength of that title propose to make a final partition of the territory hitherto the subject of a common occupation, if they would abide by their own rule, as solemnly propounded by their commissioners on two distinct occasions, the middle distance between 38° and 54° 40′ becomes the boundary line of course. The extremities of the country to be divided are thus marked out by the Presidio of San Francisco on the southern side, and by Fort Frazer on the northern, and nature seems to have accorded the embouchure of the Columbia River, in the latitude of 46° 18′, to meet the conditions of so reasonable a rule, as that which the United States then maintained to be grounded on an acknowledged principle of international law.

Its application.

Such a rule might reasonably be resorted to on this occasion, as furnishing a solution to the problem of converting the common rights of the United States and Great Britain into separate rights. The United States, however, might admit that the principle was abstractedly sound, but that its application, as proposed, was inadmissible, as their claim commenced at 42°, and not at 38°. It is evident, however, that the derivative title from Spain as against Great Britain, if it be advanced as the basis of the negotiation, which has been the case, cannot assume a different form in the hands of the United States, from that which it would have presented in the hands of Spain herself: otherwise, *the less* Spain had ceded to the United States, *the more* the United States would be entitled to claim from Great Britain, which of course is untenable. But Great Britain has conceded to the United States more than

Objections to it.

the limits which this rule would assign to them, namely, the entire left bank of the Columbia River as far as the 49th parallel, thereby giving up to them the exclusive possession of the Lewis River and the Clarke River, and the intermediate territory.

Mr. Pakenham's letter.

The general character, however, of the proposals of Great Britain cannot be better described than in the words of Mr. Pakenham's letter of Sept. 12. 1844:—

"It is believed that by this arrangement ample justice would be done to the claims of the United States, on whatever ground advanced, with relation to the Oregon territory. As regards extent of territory, they would obtain, acre for acre, nearly half of the entire territory to be divided. As relates to the navigation of the principal river, they would enjoy a perfect equality of right with Great Britain: and with respect to harbours, Great Britain shows every disposition to consult their convenience in this particular. On the other hand, were Great Britain to abandon the line of the Columbia as a frontier, and to surrender the right to the navigation of that river, the prejudice occasioned to them by such an arrangement would, beyond all proportion, exceed the advantage accruing to the United States from the possession of a few more square miles of territory. It must be obvious to every impartial investigator of the subject, that in adhering to the line of the Columbia, Great Britain is not influenced by motives of ambition, with reference to extension of territory, but by considerations of utility, not to say necessity, which cannot be lost sight of, and for which allowance ought to be

made, in an arrangement professing to be based on considerations of mutual convenience and advantage."

Great Britain has advanced in her offers on each separate negotiation. Let her make one step more in advance. Let her offer to the United States to declare the ports in Admiralty Inlet and Puget's Sound to be "Free Ports," with a given *radius* of free territory. The advantage which she would give to the United States, would far exceed the prejudice occasioned to herself by such an arrangement, and the proposal would be in accordance with the principle sanctioned by the 5th article of the Convention of the Escurial, which guaranteed a mutual freedom of access to the future settlements of either party for the purposes of trade. If her Britannic Majesty's Government should deem it consistent with a just regard to the interests of Great Britain, as it would certainly be in accordance with the spirit of moderation which has hitherto influenced her Majesty's councils, to make this further offer, and if the President of the United States should instruct his plenipotentiary to reject it, the attempt to effect a partition of the territory by treaty may be regarded as hopeless. It will then be best for both parties that the Convention of 1827 should be abrogated, and the future destinies of the country be regulated by the general law of nations. It would be idle to speculate upon those future destinies,—whether the circumstances of the country justify Mr. Webster's anticipations that it will form at some not very distant day an independent confederation, or whether the natural divisions of

Suggestions of further final proposal.

Mr. Webster's anticipations.

Northern and Southern Oregon are likely to attach ultimately the former by community of interests to Canada, and the latter to the United States of America. When it is remembered, that Mr. Calhoun declared, in 1843, that "the distance for a fleet to sail from New York to the Columbia is more than 13,000 miles, a voyage that would require six months," and that "the distance over-land from the state of Missouri to the mouth of the Columbia River is about 2000 miles, over an unsettled country of naked plains and mountains, a march, if unopposed, of 120 days," the scepticism of such as doubt the inevitable absorption of Oregon into the United States, seems at least to be excusable.

Mr. Calhoun's declaration.

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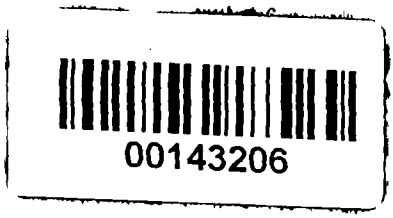
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